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No. 81-

Office-Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1981

PRUDENCE J. CAMARDO; ARTHUR FALZONE, HENRY J. PAPE, IVAN WAHLS, LILLIAN WAHLS, and all persons similarly situated, BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT No. 4, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 10, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 8, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 6; All of the TOWN OF GREECE, and DANIEL A. STETZEL, SR.,

Appellants,

vs.

CITY OF ROCHESTER, N.Y., BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT, BOARD OF

(Over)

Appeal From The Court Of Appeals Of The State Of New York

JURISDICTIONAL STATEMENT

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EDUCATION OF GREECE CENTRAL SCHOOL DISTRICT, STATE OF NEW YORK, BRIGHTON COMMON SCHOOL DISTRICT, BRIGHTON TEN COMMON SCHOOL DISTRICT, BRIGHTON FIVE COMMON SCHOOL DISTRICT, BOARD OF EDUCATION OF GATES-CHILI CENTRAL SCHOOL DISTRICT, BOARD OF EDUCATION OF PENFIELD CENTRAL SCHOOL DISTRICT, BOARD OF EDUCATION OF RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT,

Appellees.

Action No. 1

ELLEN ANDERSON and CHARLES and GERTRUDE LA VALLE, and all persons similarly situated, BERNADETTE UEBLACKER and JAMES and PATRICIA BRITT, and all persons similarly situated,

Appellants,

vs.

THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT, and THE STATE OF NEW YORK,

Appellees.

Action No. 2

QUESTION PRESENTED

Do specially enacted legislative grants create individual vested rights which may not be divested by subsequent specially enacted legislation?

PARTIES TO THE PROCEEDING

Action No. 1

PRUDENCE J. CAMARDO, as a resident, taxpayer and parent of school children residing in Gates Common School District No. 6, Town of Greece, Monroe County, New York suing on behalf of herself and of all other residents, taxpayers and parents residing in said School District similarly situated,

and

ARTHUR FALZONE, as a resident, taxpayer and parent of a school child residing in Common School District No. 8 of the Town of Greece, Monroe County, New York, suing on behalf of himself and all other residents, taxpayers and parents residing in said School District similarly situated,

and

HENRY J. PAPE, as a resident, taxpayer and parent of a school child residing in Common School District No. 10 of the Town of Greece, Monroe County, New York, suing on behalf of himself and of all other residents, taxpayers and parents residing in said School District similarly situated,

and

IVAN WAHLS and LILLIAN WAHLS, as residents, taxpayers and parents of a school child residing in Union Free Four School District of the Town of Greece, Monroe County, New York, suing on behalf of themselves and of all other residents, taxpayers and parents residing in said School District similarly situated,

and

BOARD OF EDUCATION OF GREECE UNION FREE NO. FOUR SCHOOL DISTRICT of the Town of Greece, Monroe County, New York,

and

BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT NO. 10 of the Town of Greece, Monroe County, New York,

and

BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT NO. 8 of the Town of Greece, Monroe County, New York,

and

BOARD OF TRUSTEES OF GATES COMMON SCHOOL DISTRICT NO. 6 of the Town of Greece, New York,

and

DANIEL A. STETZEL, SR., as a resident, taxpayer and parent of a school child residing in Union Free No. Four School District, Town of Greece, Monroe County, New York, suing on behalf of himself and of all other residents, taxpayers and parents residing in said School District, and parents similarly situated in other plaintiff School Districts,

Appellants,

vs.

CITY OF ROCHESTER, NEW YORK,

and

BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT, City of Rochester, New York,

and

BOARD OF EDUCATION OF GREECE CENTRAL SCHOOL DISTRICT, Town of Greece, New York,

and

STATE OF NEW YORK,

and

BRIGHTON COMMON SCHOOL DISTRICT NO. TWO, Town of Brighton, New York,

and

BRIGHTON TEN COMMON SCHOOL DISTRICT, Town of Brighton, New York,

and

BRIGHTON FIVE COMMON SCHOOL DISTRICT, Town of Brighton, New York,

and

BOARD OF EDUCATION OF GATES-CHILI CENTRAL SCHOOL DISTRICT, Town of Gates, New York,

and

BOARD OF EDUCATION OF PENFIELD CENTRAL SCHOOL DISTRICT, Town of Penfield, New York,

and

BOARD OF EDUCATION OF RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT, Town of Henrietta, New York,

Appellees.

Action No. 2

ELLEN ANDERSON and CHARLES and GERTRUDE LA VALLE, as residents, property owners and taxpayers residing in former Brighton five common school district on behalf of themselves and all other similarly situated residents, property owners and taxpayers residing in said district,

and

BERNADETTE EUBLACKER and JAMES and PATRICIA BRITT, as residents, property owners, taxpayers and parents of school age children residing in former Brighton five common school district, on behalf of themselves and all other similarly situated residents, property owners, taxpayers and parents residing in said district,

Appellants,

vs.

THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT, and THE STATE OF NEW YORK,

Appellees.

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In The

Supreme Court of the United States

October Term, 1981

PRUDENCE J. CAMARDO; ARTHUR FALZONE, HENRY J. PAPE, IVAN WAHLS, LILLIAN WAHLS, and all persons similarly situated, BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT No. 4, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 10, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 8, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 6; All of the TOWN OF GREECE, and DANIEL A. STETZEL, SR.,

Appellants,

vs.

CITY OF ROCHESTER, N.Y., BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT, BOARD OF EDUCATION OF GREECE CENTRAL SCHOOL DISTRICT, STATE OF NEW YORK, BRIGHTON COMMON SCHOOL DISTRICT, BRIGHTON TEN COMMON SCHOOL DISTRICT, BRIGHTON FIVE COMMON SCHOOL DISTRICT, BOARD OF EDUCATION OF GATES-CHILI CENTRAL SCHOOL DISTRICT, BOARD OF EDUCATION OF PENFIELD CENTRAL SCHOOL DISTRICT, BOARD OF EDUCATION OF RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT,

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Action No. 1

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vs.

THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT, and THE STATE OF NEW YORK,

Appellees.

Action No. 2

Appeal From The Court Of Appeals Of The State Of New York

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The Order of the New York State Court of Appeals dismissing appellants appeal therein, and thereby affirming the opinion of the Appellate Division of the Supreme Court of New York for the Fourth Judicial Department are reprinted in the appendix herein. Those Order and Opinion have not been published.

JURISDICTION OF THE COURT

This appeal arises from an action seeking a declaratory judgment finding that a 1975 Act of the State of New York was repugnant to the Constitutions of the State of New York and the United States.

The Appellate Division of the State Supreme Court for the Fourth Judicial Department affirmed a lower court decision upholding the constitutionality of the subject Act.

An appeal was taken to the New York Court of Appeals, which appeal was dismissed by that Court *sua sponte* on April 9, 1981.

The Notice of Appeal to this Court was filed in the Court of Appeals of the State of New York on June 29, 1981.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(2).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article I, Section 10 of the Constitution of the United States provides:

"§10. Restrictions upon powers of states

Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Product of all Duties and Imports, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay."

CHAPTER 359 OF THE LAWS OF NEW YORK, 1915

This is the first of three statutes by which territory was annexed to the City of Rochester, New York. Its provisions are lengthy and in addition to accomplishing the annexation, provides for street and sewer maintenance, streetcar fares and related administrative matters. These provisions are not relevant to the issues herein.

The pertinent Section of the Act provides as follows:

"AN ACT to amend chapter seven hundred and fifty-five of the laws of nineteen hundred and seven, entitled "An act constituting the charter of the city of Rochester," generally.

Became a law April 26, 1915, with the approval of the Governor. Passed, three-fifth being present.

Accepted by the City.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

. . .

§3. Subdivision seven of section three hundred and eighty-three of said act, as amended by chapter six hundred and fifty-nine of the laws of nineteen hundred and thirteen, is hereby amended so as to read as follows:

7. Non-resident pupils. To allow the children of persons not residents of the city to attend the schools under the care and control of the board, upon the payment of such tuition and upon such terms as the board may by resolution prescribe. Permission must be granted to children residing in those portions not annexed to school districts numbers two and ten of the town of Brighton, as such districts existed on the first day of March, nineteen hundred and thirteen, and of school district number four of the town of Greece, as the same existed on the first day of March, nineteen hundred and

fifteen, to attend without payment of tuition schools under the care and control of the board. The board must cause to be made and filed in its office maps showing the boundaries of the aforesaid districts as existing on said respective dates."

CHAPTER 547 OF THE LAWS OF NEW YORK, 1918

This is the second of three statutes by which territory was annexed to the City of Rochester, New York. Its provisions are lengthy and in addition to accomplishing the annexation, provides for street and sewer maintenance, streetcar fares and related administrative matters. These provisions are not relevant to the issues herein.

The pertinent Section of the Act provides as follows:

"AN ACT to amend chapter seven hundred and fifty-five of the laws of nineteen hundred and seven, entitled "An act constituting the charter of the city of Rochester," generally.

Became law May 10, 1918, with the approval of the Governor. Passed, three-fifths being present.

Accepted by the City.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§8. Such chapter is further amended by adding thereto a new section to be numbered three hundred and eighty-one, and to read as follows:

§381. Attendance of nonresident pupils. The board of education may allow the children of persons not residents of the city to attend the schools under the care and control of the board upon the payment of such tuition and upon such terms as the board may by resolution prescribe. Permission must be granted to children residing in those portions not annexed of school districts numbers two and ten of the town

of Brighton, as such districts existed on the first day of March, nineteen hundred and thirteen, of school district number four of the town of Greece as the same existed on the first day of March, nineteen hundred and fifteen, and of school district number six of the town of Gates and numbers eight and ten of the town of Greece, as the same existed on the first day of March, nineteen hundred and eighteen, to attend without the payment of tuition schools under the care and control of the board. The board must cause to be made and filed in its office maps showing the boundaries of the aforesaid districts as existing on said respective dates."

CHAPTER 519 OF THE LAWS OF NEW YORK, 1922

This is the third of three statutes by which territory was annexed to the City of Rochester, New York. Its provisions are lengthy and in addition to accomplishing the annexation, provides for street and sewer maintenance, street car fares and related administrative matters. These provisions are not relevant to the issues herein.

The pertinent Section of the Act provides as follows:

"AN ACT to amend chapter seven hundred and fifty-five of the laws of nineteen hundred and seven, entitled "An act constituting the charter of the City of Rochester," generally.

Accepted by the City.

Became law April 6, 1922, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§6. Section three hundred and eighty-one of such chapter, as added by chapter five hundred and forty-seven of the laws of nineteen hundred and eighteen, is hereby amended to read as follows:

§381. Attendance of nonresident pupils. The board of education may allow the children of persons not residents of the city to attend the schools under the care and control of the board upon the payment of such tuition and upon such terms as the board may by resolution prescribe. Permission must be granted to children residing in those portions not annexed of school districts numbers two and ten of the town of Brighton, as such districts existed on the first day of March, nineteen hundred and thirteen, of school district number five of the town of Brighton, as such districts existed on the first day of March, nineteen hundred and thirteen, of school district number five of the town of Brighton, as the same existed on the first day of March, nineteen hundred and twenty-two, of school district number four of the town of Greece as the same existed on the first day of March, nineteen hundred and fifteen, and of school district number six of the town of Gates and numbers eight and ten of the town of Greece, as the same existed on the first day of March, nineteen hundred and eighteen, to attend without the payment of tuition schools under the care and control of the board. The board must cause to be made and filed in its office maps showing the boundaries of the aforesaid districts as existing on said respective dates."

CHAPTER 129 OF THE LAWS OF NEW YORK, 1975

"AN ACT to abolish certain school districts in Monroe county and to include those districts in central school districts and to make an appropriation therefor

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Notwithstanding any other provisions of any general, special or local laws, rules or regulations to the contrary:

a. Greece common school districts numbers eight and ten, Greece union free number four school district and the northern part of Gates common school district number six, which is contained within the town of Greece, Monroe county, New York, are hereby abolished and Greece union free number four school district, Greece common school districts numbers eight and ten and the northern part of Gates common school district number six, which is contained within the town of Greece, Monroe county, New York, are added to and made a part of Greece central school district of the town of Greece, Monroe county.

b. The southern part of Gates common school district number six is herreby abolished and that part which is contained within the town of Gates is added to and made a part of Gates Chili central school district.

c. Brighton common school district number two and Brighton ten common school district are hereby abolished and made a part of Penfield central school district.

d. Brighton five common school district is hereby abolished and made a part of the Rush-Henrietta central school district.

§2. a. Real or personal property possessed by any of the school districts being abolished herein shall remain the property of the said district being abolished.

b. Any district being abolished herein which on the effective date of this act, owns real or personal property shall continue to exist in law for the purpose of disposing of and settling any property interests it may be possessed of and to that end the trustees and other officers shall continue in office and have whatever authority necessary to implement the provisions of this subdivision.

c. The provisions of sections fifteen hundred seventeen and fifteen hundred eighteen of the education law shall apply to all cases in section one hereof.

§3. a. The city school district of the city of Rochester shall guarantee seats in the schools of the city school district

to all students from the common school districts, or union free school district, abolished by this act who are enrolled or registered for attendance in schools in the city school district as of May thirty-first, nineteen hundred seventy-five and siblings of such subject, however, to a rate of tuition computed in accordance with approved state procedures.

b. The central school districts designated in section one of this act shall be obligated to pay the tuition as provided for in subdivision a of this section for students residing in the respective central school districts who, on and after July first, nineteen hundred seventy-five, choose to remain in schools in the city school district, and shall also be obligated, on and after such date, to provide transportation as required by law or as authorized by the voters of the respective central school districts. Such obligation shall extend only to students who were enrolled or registered for attendance in schools in the city school district as of May thirty-first, nineteen hundred seventy-five and siblings of such students and shall continue until such students and siblings complete the twelfth grade.

c. With the exception of those instances enumerated in this section, the city of Rochester, on and after July first, nineteen hundred seventy-five shall no longer be required to accept students from the school districts being abolished herein into its school district without the payment of tuition.

§4. a. Real property in such common school districts and the union free school district abolished in section one of this act shall be subject to taxation pursuant to article thirteen of the real property tax law; provided, however, that such real property shall be exempt from taxation by the central school district in which located to the extent of eighty percent of the tax which would otherwise be so payable for the fiscal year commencing July first, nineteen hundred seventy-five, to the extent of sixty percent of such tax for the fiscal year commencing July first, nineteen hundred seventy-six, to the extent of forty percent of such tax for the fiscal

year commencing July first, nineteen hundred seventy-seven, and to the extent of twenty percent of such tax for the fiscal year commencing July first, nineteen hundred seventy-eight.

b. The central school districts in which real property is located, which property is exempted from taxation by the foregoing subdivision of this section, shall be held harmless from loss of revenue because of such exemption. Such central school districts shall make all budget calculations, shall be treated for all state aid and apportionment of public money purposes, and shall levy its local property taxes as if such real property were not exempt. The total amount of the exempt portion of any such real property taxes, as provided in subdivision a of this section shall be billed to the commission of education on or before October first of each such year and such commissioner is hereby authorized and directed to apportion such amounts to such central school districts on or before November first of each such year, provided that such moneys shall be treated as tax moneys for all purposes of article seventy-three of the education law and provided further, that no interest or penalties shall be charged by anyone on such payments, provided further, that notwithstanding the provisions of any general or special law, the commissioner of education, in computing the aid ratio of any central school district of which the common school districts and union free school district referred to in section one of this act shall have become a part, shall permit the use of the additional resident weighted average daily attendance for aid ratio purposes during the school years nineteen hundred seventy-five-seventy-six and nineteen hundred seventy-six-seventy-seven, which said additional resident weighted average daily attendance shall be that of students from such former common school districts and union free school district who shall be attending the schools of such central school districts during such two school years.

§5. The sum of two million five hundred thousand dollars ($2,500,000), or so much thereof as may be necessary,

is hereby appropriated out of any monies in the state treasure in the general fund to the credit of the local assistance fund, not otherwise appropriated, to the education department for the purposes of section four of this act, payable on vouchers certified or approved by the commissioner of education upon audit and warrant of the state comptroller as provided by law.

§6. This act shall take effect May thirty-first, nineteen hundred seventy-five, except that section five thereof shall take effect July first, nineteen hundred seventy-five and except further that for the purposes of article seventy-three of the education law, this act shall take effect July first, nineteen hundred seventy-five."

CHAPTER 746 OF THE LAWS OF NEW YORK, 1975

"An Act to amend chapter one hundred twenty-five of the laws of nineteen hundred seventy-five, entitled "An Act to abolish certain school districts in Monroe county and to include those districts in central school districts and to make an appropriation therefor", in relation to severability.

Approved and effective Aug. 8, 1975.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section six of chapter one hundred twenty-five of the laws of nineteen hundred seventy-five, entitled "An Act to abolish certain school districts in Monroe county and to include those districts in central school districts and to make an appropriation therefor", is hereby renumbered to be section seven, and a new section, to be section six, is hereby inserted therein to read as follows:

§6. If any section or subdivision of this act or any part thereof shall be adjudged by any court of competent jurisdiction to be unconstitutional, invalid or ineffective such

judgment shall not affect, impair or invalidate the remainder or any other section or subdivision thereof.

§2. This act shall take effect immediately."

STATEMENT OF THE CASE

By three special legislative enactments adopted by the State of New York in 1915, 1918 and 1922 large areas of land theretofore in the Town of Greece, New York, were annexed to the City of Rochester, New York. The land so annexed included much of the territory and most of the school facilities of four existing school districts. Thus, those remaining areas of the said school districts which were not part of the annexations were left without facilities and a greatly reduced tax base. To compensate for this, the annexation statutes provided that children residing in those areas were to be granted permission to attend schools in the City of Rochester School District without the payment of tuition.

The appellants herein are resident taxpayers of those areas which were not annexed and whose children have attended the City School District of the City of Rochester, New York and the governing boards of the four school districts which continued to exist in their diminished territory after the annexations.

In 1975 the four remaining school districts were abolished by an Act of the State of New York and this territory consolidated with the Greece Central School District.

The right to attend schools of the City of Rochester School District was extinguished except for those already enrolled and their siblings, and the appellant residents became subject to taxation by the Greece Central School District.

The Appellants raised the question herein presented in the Court of first instance by service of a Summons and Complaint

alleging the unconstitutionality of the subject act. The Court of first instance (Supreme Court, Monroe County, New York) found, after testimony on the merits, that the act was constitutional.

An appeal was taken to the Appellate Division of Supreme Court for the Fourth Judicial Department. The question herein presented was raised in that court at inception of the appeal and by Briefs and Oral Arguments. The Appellate Division affirmed the lower court, finding the subject act constitutional.

An appeal was taken to the Court of Appeals of the State of New York. The question herein presented was raised at inception of the appeal with the filing of a jurisdiction statement under New York State Rules. The Court of Appeals dismissed the appeal *sua sponte,* holding that no substantial constitutional question was involved.

SUBSTANTIALITY OF FEDERAL QUESTION

This appeal presents important and substantial questions of Federal interest with respect to the federal constitutional limitations upon the powers of the State.

In the early part of this century, the State of New York, at the request of the City of Rochester, enacted special laws to annex territory to that city. As an integral part of that legislation the State granted to a limited number of children who resided outside the city limits the right to attend city schools. In 1975 the State, while leaving the annexations intact, repealed the rights granted to those children.

Appellants contend that the original annexation statutes by reason of their special nature constituted contracts between the State and the individuals they were intended to benefit and that their subsequent repeal is an impairment of those rights. Such impairment falls squarely with the prohibition contained in Article I, Section 10 of the Constitution of the United States

which, in absolute terms, prohibits any state from enacting any law impairing the obligation of contracts.

The New York Court of Appeals, in refusing to hear the appeal from the decision of the lower Appellate Court affirmed that court's decision. In its decision, the text of which is reproduced in the Appendix hereto, the Appellate Division recognized that "the essential question is the existence of a contractual relation". We respectfully submit, that in finding that, as a matter of state law, no contractual relationship existed, the Court failed to give force to federal recognition of the immutable nature of those special acts by which grants, privileges or exemptions are given, and the protection afforded them by the Constitution of the United States.

The Supreme Court of the United States has long declared that a "legislative enactment may contain provisions which, when accepted as a basis for action by individuals, become contracts between them and the State or its subdivisions with the protection of Article 1, Section 10 [of the United States Constitution]". *Indiana ex rel Anderson v. Brand,* 303 U.S. 95.

In its affirmation of the lower court decisions this Court has explicitly held that, "When the State through its legislature grants a franchise, privilege, or exemption to a corporation, either in the act of incorporating it, or by other legislation, followed by action of the corporation under or in reliance upon the grant so made, it constitutes a contract, based on valuable consideration, the obligation of which cannot be impaired by subsequent legislation . . . [Citations]". *People v. Mealy,* 254 U.S. 47.

The appellants herein bought their homes, and made educational plans for their children in reliance upon the special promises made to them and the federal guarantee that those promises would be kept.

Breach of that promise by the State of New York brings before the Court substantial and important federal questions which require plenary consideration, with briefs on the merits and oral arguments, for their resolution.

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APPENDICES

APPENDIX A — Order of the Court of Appeals of the State of New York (filed April 9, 1981)

STATE OF NEW YORK
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the ninth day of April A.D. 1981

PRESENT, HON. LAWRENCE H. COOKE, *Chief Judge, presiding.*

4 *Mo. No. 391 SSD 48*

Prudence J. Camardo, et al.,

Appellants,

vs.

The Board of Education of the City of Rochester and the City of Rochester, et al.,

Respondents.

(and another action.)

The appellants having filed notice of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal be and the same hereby is dismissed without costs, by the Court *sua sponte*, upon the ground that no substantial constitutional question is directly involved.

/s/ JOSEPH W. BELLACOSA
Clerk of the Court

APPENDIX B — Order and Memorandum of the Appellate Division of the Supreme Court of New York, Fourth Judicial Department (filed December 12, 1980)

SUPREME COURT OF
THE STATE OF NEW YORK
APPELLATE DIVISION,
FOURTH JUDICIAL DEPARTMENT

PRESENT: SIMONS, J.P., HANCOCK, SCHNEPP, CALLAHAN, MOULE, JJ.

Prudence J. Camardo, et al.,

Appellants,

v.

The Board of Education of the City School District and The City of Rochester, et al.,

Respondents,

And Another Action.

The above named Prudence J. Camardo, et al. having appealed to this Court from a judgment of the Supreme Court, entered in the Monroe County Clerk's office on April 3, 1979 and said appeal having been argued by Jeffrey Marks of counsel for appellants, Reynolds Hahn of counsel for respondents Board of Education of City School District and City of Rochester Shirley Siegel of counsel for respondent, State of N.Y. William Easton of counsel for respondent Board of Education of Greece Central School District Robert Wendt of counsel for respondent Board of Education of Rush-Henrietta Central School District, and due deliberation having been had thereon

It is hereby ORDERED, That the judgment so appealed from be and the same hereby is unanimously affirmed with costs.

Memorandum, which is hereby made a part hereof.

Entered: DEC 12 1980

MARY F. ZOLLER, *Clerk*

APPENDIX B — Order and Memorandum of the Appellate Division of the Supreme Court of New York, Fourth Judicial Department (filed December 12, 1980)

995. (Monroe Co.) — Prudence J. Camardo, et al, Appellants v. The Board of Education of the City School District and the City of Rochester, et al, Respondents, and Another Action. — Judgment unanimously affirmed with costs. Memorandum: By chapter 359 of the Laws of 1915, chapter 547 of the Laws of 1918 and chapter 519 of the Laws of 1922, the City Charter of Rochester was amended to bring lands formerly a part of the Towns of Greece and Brighton within the city boundaries. Permission was granted to children in unannexed school districts, whose school facilities were annexed, to attend Rochester city schools without payment of tuition. The tuition-free attendance of these nonresident children continued until enactment of chapter 125 of the Laws of 1975 (May 1975 Act). The May 1975 Act provides that these unannexed school districts be abolished and added to existing central school districts; that the city school district guarantee seats to all students from the abolished districts and their siblings, enrolled in city schools as of May 31, 1975; that the property owners in the abolished districts be required to pay the taxes of the appropriate central school district at the rate of 20 percent the first year, increasing by 20 percent each year to 100 percent the fifth year; and that the State pay 2.5 million dollars to the central school district for revenues lost by operation of these tax exemptions.

Plaintiffs brought this action alleging that the earlier legislation created a contract which promised them the right to maintain their own school districts and the right to attend city schools tuition-free, and that the contract could not be repudiated by the May 1975 Act. Plaintiffs contend that the May 1975 Act unconstitutionally impairs the obligation of contract, and, in the alternative, they challenge its validity on four different constitutional grounds. At the close of plaintiffs' case, defendants moved for declaratory judgment. The court

APPENDIX B — Order and Memorandum of the Appellate Division of the Supreme Court of New York, Fourth Judicial Department (filed December 12, 1980)

granted defendants' motion and entered judgment dismissing the complaint, holding that plaintiffs failed to prove a breach of any contractual obligation between the City, State and affected homeowners; that plaintiffs failed to prove any cause of action against defendants; and that the provisions of the May 1975 Act are not violative of either the Constitution of the United States or the State of New York.

In determining whether subsequent legislation impairs the obligation of a contract, the essential question is the existence of a contractual relation (Cook v City of Binghamton, 48 NY2d 323). While the presumption against the existence of a contract is stronger where plaintiff relies upon general rather than special legislation, the elements necessary to a contractual agreement must still be shown; i.e., that the language and circumstances manifest a legislative intent to create private rights of a contractual nature enforceable against the State, and that contractual elements such as bargained-for exchange between the parties, consideration and detrimental reliance exist (Cook v City of Binghamton, supra; Pennsylvania R.R. Co. v State of New York, 11 NY2d 504; People v Brooklyn Garden Apartments, Inc., 283 NY 373). Plaintiffs failed to prove any of the elements necessary to a contractual relation; therefore, their claim of contract impairment fails.

Plaintiffs' constitutional challenge of certain provisions of the May 1975 Act appears to be an attempt to invalidate the reorganization provision as unconstitutional by association, since they claim that it would not be severable from the alleged unconstitutional portions. The challenges are without merit and, even had they been found otherwise, the severability clause of the Act would allow the reorganization plan to stand apart. (Appeals from Judgment of Monroe Supreme Court, Blauvelt, J. — Declaratory Judgment.) Present: Simons, J.P., Hancock, Schnepp, Callahan, Moule, JJ.

APPENDIX C — Judgment of the New York State Supreme Court, County of Monroe (filed April 3, 1979)

ACTION NO. 1

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

PRUDENCE J. CAMARDO, 793 Lee Road, Rochester, New York; ARTHUR FALZONE, 1514 Ridgeway Ave., Rochester, New York; HENRY J. PAPE, 1656 Creek Street, Rochester, New York; IVAN WAHLS and LILLIAN WAHLS, 223 Delmar Road, Rochester, New York; BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT NO. 4, 537 Denise Road, Rochester, New York; BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT NO. 10, 263 Bakerdale Road, Rochester, New York; BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT NO. 8, 1221 Lee Road, Rochester, New York; BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT NO. 6, 729 Lee Road, Rochester, New York; DANIEL A. STETZEL, SR., 537 Denise Road, Rochester, New York,

Plaintiffs,

vs.

CITY OF ROCHESTER, NY, City Hall, Rochester, New York; BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT, 13 S. Fitzhugh Street, Rochester, New York; BOARD OF EDUCATION OF GREECE CENTRAL SCHOOL DISTRICT, 1790 Latta Road, Rochester, New York; STATE OF NEW YORK: BRIGHTON COMMON SCHOOL DISTRICT, 600 Grosvenor Road, Rochester, New York; BRIGHTON TEN COMMON SCHOOL DISTRICT, 41 O'Connor Road, Fairport, New York; BRIGHTON FIVE COMMON SCHOOL DISTRICT, 41 O'Connor Road, Fairport, New York; BOARD OF EDUCATION OF GATES-CHILI CENTRAL SCHOOL DISTRICT, 910 Wegman

APPENDIX C — Judgment of the New York State Supreme Court, County of Monroe (filed April 3, 1979)

Road, Rochester, New York; BOARD OF EDUCATION OF PENFIELD CENTRAL SCHOOL DISTRICT, 2590 Atlantic Avenue, Penfield, New York; BOARD OF EDUCATION OF RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT, 2034 Lehigh Station Road, Rochester, New York,

Defendants.

ACTION NO. 2

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

ELLEN ANDERSON, 200 Norman Road, Rochester, New York and CHARLES and GERTRUDE LA VALLE, 110 Bastian Road, Rochester, New York, as residents, property owners and taxpayers residing in former Brighton five common school district, on behalf of themselves and all other similarly situated residents, property owners and taxpayers residing in said district, and BERNADETTE UEBLACKER, 560 E. River Road, Rochester, New York; JAMES and PATRICIA BRITT, 165 Bastian Road, Rochester, New York, as residents, property owners, taxpayers and parents of school age children residing in former Brighton five common school district, on behalf of themselves and all other similarly situated parents residing in said district,

Plaintiffs,

vs.

THE CITY OF ROCHESTER, City Hall, Rochester, New York; THE BOARD OF EDUCATION OF THE CITY OF ROCHESTER, 13 S. Fitzhugh Street, Rochester, New York; THE BOARD OF EDUCATION OF THE RUSH-

APPENDIX C — Judgment of the New York State Supreme Court, County of Monroe (filed April 3, 1979)

HENRIETTA CENTRAL SCHOOL DISTRICT, 2034 Lehigh Station Road, Rochester, New York; and THE STATE OF NEW YORK,

Defendants.

The issues in this action for declaratory judgment having come on to be heard before this Court at a Trial Term thereof held at the Hall of Justice in the City of Rochester, New York before Justice Arthur Ervin Blauvelt without a jury on November 6, 8, 9, 13 and 14, 1978 and the Plaintiffs in Action No. 1 having appeared by Culley, Marks, Corbett, Tanenbaum, Reifsteck and Potter, William M. Marks, Burton D. Tanenbaum and Jeffrey P. Marks, Esqs. of Counsel; and the Plaintiffs in Action No. 2 having appeared by Robert D. O'Connell, Robert D. O'Connell and James Coniglio, Esqs. of Counsel; and the Defendant Board of Education of Greece Central School District having appeared by Easton, Bittker & DeLuca, William E. Easton and David V. DeLuca, Esqs. of Counsel; and the Defendant State of New York having appeared by Lewis J. Lefkowitz, Attorney General of the State of New York by Richard A. Dutcher, Assistant Attorney General, Paul O. Harrison of Counsel; and the Defendant City of Rochester, New York having appeared by Louis N. Kash, Corporation Counsel, Reynolds E. Hahn, Esq. of Counsel; and the Defendant Board of Education of the City School District, City of Rochester having appeared by Adam D. Kaufman, Michael B. Kirschen, Esq. of Counsel and the Defendant Board of Education of Rush-Henrietta Central School District having appeared by Robert H. Wendt, Esq. and the Plaintiffs in both Action No. 1 and Action No. 2 having presented their proofs and rested and the Court having made its Bench decision orally that the Plaintiffs have failed to prove Chapter 125 of the Laws of 1975 of the State of New York is an unconstitutional

enactment of the New York State Legislature, that Chapter 125 of the Laws of 1975 of the State of New York was a constitutional enactment which was not repugnant to either the constitution of the United States or the State of New York, and that the Plaintiffs failed to prove the breach of any contractual obligation or prove any cause of action against the Defendants and granting judgment of non-suit in favor of the Defendants dismissing the complaints of the Plaintiffs for failure to prove a cause of action and directing that judgment be entered accordingly.

Now on motion of Easton, Bittker & DeLuca, attorneys for the Defendant Board of Education of Greece Central School District it is

ADJUDGED AND DECREED that the provisions of Chapter 125 of the Laws of 1975 of the State of New York, as amended, are constitutional and have not been proven to violate either the constitution of the United States of America or the State of New York and it is further

ADJUDGED AND DECREED that the Plaintiffs have failed to prove a breach of any contractual obligation between the parties or any cause of action against the Defendants of any of them and it is further

ADJUDGED AND DECREED that the complaints herein are dismissed for failure of the Plaintiffs to prove a cause of action and it is further

ADJUDGED AND DECREED that the motions of the Defendants and Plaintiffs for Summary Judgment are denied, the motion of Defendants to strike certain testimony, to strike the answers to the interrogatories contained in Exhibit 3 and Exhibit 5 and the so called Anderson deed from Remington Anderson in 1917 is denied and the motion of the Defendant

APPENDIX C — Judgment of the New York State Supreme Court, County of Monroe (filed April 3, 1979)

City of Rochester and Board of Education of the City School District to strike certain paragraphs of the complaint is denied and it is further

ORDERED AND DECREED that all other motions on which the Court reserved decision during trial have become academic in view of the disposition of this case and are not passed upon.

ADJUDGED AND DECREED that the Defendants herein recover of the Plaintiffs' costs and disbursements of this action as taxed in the sum of $400.00 to be divided equally among the defendants.

Approved as to form:

CULLEY, MARKS, CORBETT,
TANENBAUM, REIFSTECK & POTTER

By BURTON D. TANENBAUM

ATTORNEYS FOR COMARDO, et al

ROBERT D. O'CONNELL

By

ATTORNEY FOR ANDERSON, et al

ROBERT ABRAMS, Attorney General, by
PAUL O. HARRISON, ASSISTANT ATTORNEY GENERAL

By PAUL O. HARRISON

ATTORNEYS FOR STATE OF NEW YORK

LOUIS K. NASH

By LOUIS N. KASH By REYNOLDS E. HAHAN

ATTORNEYS FOR CITY OF ROCHESTER

APPENDIX C — Judgment of the New York State Supreme Court, County of Monroe (filed April 3, 1979)

ADAM D. KAUFMAN

By ADAM D. KAUFMAN

ATTORNEY FOR CITY SCHOOL DISTRICT
CITY OF ROCHESTER

ROBERT H. WENDT

By ROBERT H. WENDT

ATTORNEY FOR BOARD OF EDUCATION
RUSH-HENRIETTA SCHOOL DISTRICT

Signed March 30, 1979.

ENTER:

/s/ ARTHUR ERVIN BLAUVELT
JUSTICE OF THE SUPREME COURT

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MONROE COUNTY
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APPENDIX D — Notice of Appeal filed June 29, 1981 in the Court of Appeals of the State of New York and in Supreme Court of the State of New York, Monroe County, being the Court possessed of the record

STATE OF NEW YORK
COURT OF APPEALS

PRUDENCE J. CAMARDO; ARTHUR FALZONE, HENRY J. PAPE, IVAN WAHLS, LILLIAN WAHLS, and all persons similarly situated, BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT No. 4, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 10, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 8, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 6; All of the TOWN OF GREECE, and DANIEL A. STETZEL, SR.,

Appellants,

vs. Action No. 1

CITY OF ROCHESTER, N.Y., BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT, BOARD OF EDUCATION OF GREECE CENTRAL SCHOOL DISTRICT, STATE OF NEW YORK, BRIGHTON COMMON SCHOOL DISTRICT, BRIGHTON TEN COMMON SCHOOL DISTRICT, BRIGHTON FIVE COMMON SCHOOL DISTRICT, BOARD OF EDUCATION OF GATES-CHILI CENTRAL SCHOOL DISTRICT, BOARD OF EDUCATION OF PENFIELD CENTRAL SCHOOL DISTRICT, BOARD OF EDUCATION OF RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT,

Appellees.

APPENDIX D — Notice of Appeal filed June 29, 1981 in the Court of Appeals of the State of New York and in Supreme Court of the State of New York, Monroe County, being the Court possessed of the record

ELLEN ANDERSON and CHARLES and GERTRUDE LA VALLE, and all persons similarly situated, BERNADETTE UEBLACKER and JAMES and PATRICIA BRITT, and all persons similarly situated,

Appellants,

vs. Action No. 2

THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT, and THE STATE OF NEW YORK,

Appellees.

NOTICE OF APPEAL TO
THE SUPREME COURT
OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that Prudence J. Camardo; Arthur Falzone, Henry J. Pape, Ivan Wahls, Lillian Wahls, and all persons similarly situated, Board of Education of Union Free School District No. 4, Board of Trustees of Common School District No. 10, Board of Trustees of Common School District No. 8, Board of Trustees of Common School District No. 6; All of the Town of Greece, and Daniel A. Stetzel, Sr., the appellants above-named, hereby appeal to The Supreme Court of The United States from the final order of the Court of Appeals of the State of New York dismissing the appeal filed therein, entered in this suit on April 9, 1981.

APPENDIX D — Notice of Appeal filed June 29, 1981 in the Court of Appeals of the State of New York and in Supreme Court of the State of New York, Monroe County, being the Court possessed of the record

This appeal is taken pursuant to Title 28, United States Code, Section 1257, sub paragraph.

Dated: June 24, 1981

/s/ DONALD F. POTTER
Donald F. Potter, Esq. Of Counsel
CULLEY, MARKS, CORBETT,
TANENBAUM, REIFSTECK & POTTER
Attorneys for Appellants
Office and P.O. Address
36 Main Street West
Rochester, New York 14614

No. 81-50

Supreme Court, U.S.
FILED
AUG 3 1981
ALEXANDER L. ...
CLERK

In The

Supreme Court of the United States

October Term, 1981

PRUDENCE J. CAMARDO, ARTHUR FALZONE, HENRY J. PAPE, IVAN WAHLS, LILLIAN WAHLS, and all persons similarly situated, BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT No. 4, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 10, BOARD OF TRUSTEES OF COMMON SCHOOL DISTKICT No. 8, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 6; All of the TOWN OF GREECE, and DANIEL A. STETZEL, SR., *Appellants,*

vs.

CITY OF ROCHESTER, N.Y., BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT, BOARD OF

(Over)

Appeal from the Court of Appeals of the State of New York

MOTION TO DISMISS APPEAL

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of Counsel

EDUCATION OF GREECE CENTRAL SCHOOL DISTRICT, STATE OF NEW YORK, BRIGHTON COMMON SCHOOL DISTRICT, BRIGHTON TEN COMMON SCHOOL DISTRICT, BRIGHTON FIVE COMMON SCHOOL DISTRICT, BOARD OF EDUCATION OF GATES-CHILI CENTRAL SCHOOL DISTRICT, BOARD OF EDUCATION OF PENFIELD CENTRAL SCHOOL DISTRICT, BOARD OF EDUCATION OF RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT,

Appellees.

Action No. 1

ELLEN ANDERSON and CHARLES and GERTRUDE LA VALLE, and all persons similarly situated, BERNADETTE UEBLACKER and JAMES and PATRICIA BRITT, and all persons similarly situated,

Appellants,

vs.

THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT, and THE STATE OF NEW YORK,

Appellees.

Action No. 2

MOTION TO DISMISS APPEAL

Pursuant to Rule 16, paragraphs 1(b) and 1(d), of the Revised Rules of this Court, appellee moves that this appeal be dismissed for the reasons and on the grounds hereinafter set forth.

QUESTION PRESENTED

Can this Court summarily determine that a provision of the charter of the City of Rochester, New York, requiring the Board of Education thereof to accept children in its schools from outside the city without payment of tuition did not create a relationship of such a nature as to be protected against subsequent legislative change by the Contract Clause of the United States Constitution?

TABLE OF AUTHORITIES

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Other Authorities:	
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In The

Supreme Court of the United States

October Term, 1981

PRUDENCE J. CAMARDO, ARTHUR FALZONE, HENRY J. PAPE, IVAN WAHLS, LILLIAN WAHLS, and all persons similarly situated, BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT No. 4, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 10, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 8, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 6; All of the TOWN OF GREECE, and DANIEL A. STETZEL, SR.,

Appellants,

vs.

CITY OF ROCHESTER, N.Y., BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT, BOARD OF EDUCATION OF GREECE CENTRAL SCHOOL DISTRICT, STATE OF NEW YORK, BRIGHTON COMMON SCHOOL DISTRICT, BRIGHTON TEN COMMON SCHOOL DISTRICT, BRIGHTON FIVE COMMON SCHOOL DISTRICT, BOARD OF EDUCATION OF GATES-CHILI CENTRAL SCHOOL DISTRICT, BOARD OF EDUCATION OF PENFIELD CENTRAL SCHOOL DISTRICT, BOARD OF EDUCATION OF RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT,

Appellees.

Action No. 1

ELLEN ANDERSON and CHARLES and GERTRUDE LA VALLE, and all persons similarly situated, BERNADETTE UEBLACKER and JAMES and PATRICIA BRITT, and all persons similarly situated,

Appellants,

vs.

THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT, and THE STATE OF NEW YORK,

Appellees.

Action No. 2

Appeal From The Court of Appeals Of The State of New York

MOTION TO DISMISS APPEAL

STATEMENT

This case comes before the Supreme Court of the United States on appeal pursuant to 28 U.S.C. §1257(2). After five days of trial, the trial court (Supreme Court of the State of New York, Monroe County) decided on motion that

> "Chapter 125 of the Laws of 1975 of the State of New York was a constitutional enactment which was not repugnant to either the Constitution of the United States or the State of New York, and that the Plaintiffs failed to prove the breach of any contractual obligation or prove any cause of action against the Defendants . . ." (J.S. A-8)

The Appellate Division of the Supreme Court of the State of New York, Fourth Department, unanimously affirmed the trial court's judgment. The Appellate Division, which reviews both the law and facts, stated as follows:

> "Plaintiffs failed to prove any of the elements necessary to a contractual relation; therefore, their claim of contract impairment fails." (J.S. A-4)

The Court of Appeals of the State of New York dismissed the appeal to that court *sua sponte* upon the ground that no

substantial constitutional question is directly involved (J.S. A-1).

The facts most pertinent for a summary dismissal of the appeal herein are as follows: By Chapters 359 of the Laws of New York, 1915, 547 of the Laws of New York, 1918, and 519 of the Laws of New York, 1922, the Legislature made numerous amendments to the charter of the City of Rochester. These amendments were all accepted by the city but it is undisputed that such acceptance was not required and that the legislature could have imposed such amendments upon the city by again passing the bills without the acceptance by the city. Persons outside of the city had no involvement in the legislative process even though they might thereby be annexed to and made a part of the city, except through the normal political channels of electing or influencing their state legislators.

The statutes of 1915, 1918 and 1922 require scrutiny since these are the documents which must contain the elements of a contract, if one is to be found. Chapter 359 of the Laws of 1915 was a general amendment to the charter of the City of Rochester and footnote #1a to the title states as follows:

> "The amendments effected by this chapter are so numerous and extensive that it is impracticable to indicate the changes made."

Section 1 enlarged the boundaries of the seventeenth ward of the city to include lands not relevant to the issue herein.

Section 2 enlarged the boundaries of the twenty-third ward of the city to include the Village of Charlotte and portions of the Town of Greece. Part of Greece School District No. 4 was included in the annexed area and part was not.

Section 3 permitted the Board of Education to allow nonresidents of the city to attend city schools and required the board to allow certain children in the unannexed part of Brighton two and ten and Greece

four to attend its schools without the payment of tuition.

Section 4 stated that territory heretofore or herein annexed remained in their former respective assembly districts; transferred to the city the rights and title to all public highways and streets formerly belonging to towns and villages from which territory was taken, and limited any franchises or other rights granted in the annexed territory.

Section 5 abolished the Village of Charlotte and all of its offices, positions and employments; ceased all of the powers of town, village or school district officers over the annexed territory except for minor tax collection duties; transferred all real and personal property, moneys, books and records, of the Village of Charlotte and school district number four to the city; required the city to assume and perform all unexecuted contracts and assume all outstanding indebtedness of said village and school district; declared uncollected school and village taxes to be a valid lien upon lands against which they were assessed and with respect to the Village of Charlotte and school district number four stated that in the annexed territory they should be collected by the city and belong to the city and in the unannexed part of school district four they should be collected by the school district or county officials and belong to the city. It also provided that in the annexed portion of school district number ten that the taxes should be collected by the proper officers of the school district or county.

Section 6 provided that neither the Village of Charlotte nor school district number four should have the power to issue bonds or notes, incur indebtedness for any one purpose in excess of five hundred dollars, or convey or sell real or personal property without the approval in writing of the mayor of the City of Rochester. It also prorated the levy of taxes in the territory annexed to expenses to be incurred prior to January 1, 1916.

Section 7 provided that territory heretofore and herein annexed to the city would be subject to the same laws and ordinances as the remainder of the city. It was also provided that a corporation operating a street surface railroad must not charge any passenger more than five cents for one continuous ride from any point on its road to any other point thereon, within the limits of the City of Rochester.

Section 8 provided that Section 6, prohibiting the issuance of bonds and notes, etc. should take effect immediately, and the remainder of the act on January 1, 1916.

It can easily be seen from the above outline of the amendments to the city charter by the statute in question that it was a resolution of a number of contemporary governmental problems.

Chapter 547 of the Laws of 1918 followed a similar pattern of complexity as did Chapter 519 of the Laws of 1922. However, in both of these later laws one or more of the school districts whose territory was split by an annexation were paid sums of money to be applied upon their respective debts. (See Section 10 of Chapter 547 of the Laws of 1918 and Section 8 of Chapter 519 of the Laws of 1922)

At the time of the above charter amendments, Appellant school districts number four, eight, and ten of the Town of Greece were common school districts under the Education Law and by that law were only authorized to provide an education program through the eighth grade. The city school district provided a program through the twelfth grade.

Section 2 of Chapter 359 of the Laws of 1915, establishing the boundaries of the twenty-third ward, was amended by Chapter 547 of the Laws of 1918, which changed those boundaries further and annexed more territory from both school districts number four and ten of the Town of Greece.

Thus, some persons in the unannexed portion of school district number 4 of the Town of Greece lost the free tuition privilege by virtue of a further annexation.

Section 3, which amended section three hundred eighty-three of the city charter, and established the free tuition privilege for school district number four of the Town of Greece, was repealed on June 8, 1917. On May 10, 1918, a new section to be numbered three hundred and eighty-one was added to the charter. As renumbered and with minor language changes, it again granted the free tuition privilege to school district number four of the Town of Greece, two and ten of the Town of Brighton and added three new districts.

Section 6, which forbid school district number four of the Town of Greece to issue any bonds or notes except with the approval in writing of the mayor of the City of Rochester was repealed by Chapter 712 of the Laws of 1943.

Section 7, which guaranteed a five cent ride on the street surface railroad to any point within the City of Rochester, and which by common understanding was critical to the political success of the statute, has long since been eliminated.

It should also be observed that an amendment to the New York State Constitution in 1927 took away the power of annexation to cities without the approval of the voters in the area to be annexed, thus drastically changing the circumstances existing when the statutes claimed to create a contract were enacted.

Thus other amendments to the charter of the City of Rochester contained in the 1915 legislative act were not regarded as creating any contract rights and were freely changed or repealed from time to time.

Chapter 125 of the Laws of 1975, sometimes referred to as the "May 1975 Act", abolished those districts in which children residing therein had been given free tuition privileges

in the 1922 amendment to the City of Rochester charter. It added these areas to existing central school districts in Monroe County, chiefly the Appellee herein, thus providing complete educational facilities, transportation and programs for the children involved and full participatory status for the citizens and taxpayers. The city was required to guarantee seats in its school system for children who were already enrolled and for siblings of these children. The legislature thus fulfilled its constitutional duty to fully provide for the education of the children. It further provided that the central school districts in which the children now resided would pay tuition to the city for those children who continued to attend the city schools. Having done this, it was a formality to relieve the City of Rochester of its obligation to accept these children without the payment of tuition.

The property owners in the abolished districts, who had formerly been paying little or no school taxes on their real property, were required to pay school taxes to the central districts in which they resided, being assessed for 20% the first year, 40% the second year, 60% the third year, 80% the fourth year and 100% in all subsequent years. Because of the dismissal of Appellant's claim at the end of their proof on the threshold issue of a failure to prove any contract to be impaired, the current record may not provide adequate facts upon which to summarily proceed to further questions such as the extent of any obligation, changes in circumstances, the degree of impairment permissable, reasonableness of legislation considering the public purpose involved, and the effect of the severability clause of the statute.

ARGUMENT

This motion to dismiss is made basically on the ground that the statutes relied upon by the Appellants do not create any contract rights, and that if no contract rights exist there is no substantial federal question to be reviewed, and in fact no jurisdiction in the Supreme Court since there is no contract the obligation of which could be impaired by state action.

In accordance with the language of the court in *Appleby v. City of New York*, 271 U.S. 364, we assume that the Supreme Court of the United States must determine independently

> ". . . first, was there a contract; second, what was its proper construction and effect; and, third, was its obligation impaired by subsequent legislation as enforced by the state court?" (Id. page 380)

We also assume that although this is usually a matter of local law, that this Court will

> "determine it from the law of the state as it was when the deeds were executed to be derived from statutes then in force and from the decisions of the state court then and since made; but we must give our own judgment derived from such sources, and not accept the present conclusion of the state court without inquiry." (Id. page 380)

Conceding that this Court must make such an independent inquiry, it is our position that in the instant case this inquiry may be made and answered summarily upon this motion and without plenary consideration, briefs on the merits and oral argument. Insofar as the parties are concerned, this would be a decision on the merits. (*Hicks v. Miranda*, 422 U.S. 205)

1. The very subject matter and location of the statutes in question precludes their being understood as contracts. The statutory provisions being relied upon were located in amendments to the charter of the City of Rochester. The supreme law of the land relating to the status of municipalities and their

relationship with the states and their property interest had been ruled on by this Court in *Hunter v. City of Pittsburgh*, 207 U.S. 161 in 1907, eight years before the first charter amendment herein relied on. This Court stated at page 178:

> "This court has many times had occasion to consider and decide the nature of municipal corporations, their rights and duties, and the rights of their citizens and creditors . . . (citations omitted) . . . It would be unnecessary and unprofitable to analyze these decisions or quote from the opinions rendered. We think the following principles have been established by them and have become settled doctrines of this court, to be acted upon wherever they are applicable. Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state. Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the state within the meaning of the Federal Constitution. The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the state is supreme, and its legislative body, conforming its action to the State Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.

> *Although the inhabitants and property owners may by such changes, suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right, by contract or otherwise, in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences.* The power is in the state, and those who legislate for the state are alone responsible for any unjust or oppressive exercise of it." (Emphasis ours)

The Hunter case was quoted and followed in *Reynolds v. Sims*, 377 U.S. 533 (1964)

The provision of the charter relied on by the Appellants addresses the Board of Education of the City of Rochester, a separate body corporate, and is concerned with the state function of education. The law in this area was well understood in the year 1915. Article IX, Section 1 (now Article XI, Section 1) of the New York Constitution read as follows:

> "The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated."

Article VIII, Section 1 (now Article X, Section 1) of the Constitution of the State of New York provided for the formation of corporations, including municipal corporations. Largely because of the Dartmouth College case (*Dartmouth College v. Woodward*, 4 Wheat 518) the New York Constitution also contained a reservation of powers with respect to such acts which stated as follows:

> "All general and special acts passed pursuant to this section may be altered from time to time or repealed."

This was the known state of the law at the time of the amendments to the city charter in 1915, 1918, and 1922. With respect to school districts, the law had been judicially interpreted in 1902 by the highest New York court as follows:

> "A legislative grant to a corporation of special privileges if not forbidden by the constitution, may be a contract; but where one of the conditions of the grant is that the legislature may alter or revoke it, a law altering or revoking, or which has the effect of altering or revoking the exclusive character of such privileges cannot be regarded as one impairing the obligation of the contract, whatever may be the motive of the legislature or however harshly such legislation may operate in the particular case upon the corporation or parties affected by it. The corporation, by accepting the grant subject to the legislative power so reserved by the constitution, must be held to have assented to such reservation . . . Such an act may be amended, that is, it may be changed by additions to its terms or by qualifications of the same. It may be altered by the same power and it may be repealed. What is it that may be repealed? It is the act of incorporation. It is this organic law on which the corporate existence of the school district depends which may be repealed, so that it shall cease to be a law, or the legislature may adopt the milder course of amending the law in matters which need amendment, or altering it when it needs substantial change. All this may be done at the pleasure of the legislature. That body need give no reason for its action in the matter."

Board of Education v. Board of Education, 1902, 76 App. Div. 355, 78 N.Y.S. 522, affirmed 179 N.Y. 556, 71 N.E. 1128.

Those portions of the charter amendments wherein the legislature provided for the education of children were discharging a state, and not a local function, over which the power of the legislature was and is plenary. See *Union Free School District No. 22 v. Wilson*, 281 App. Div. 419 at 424, (1943).

> "The power of the Legislature over the educational system of the State is plenary. It may allocate functions among units of the educational system in accordance with its judgment as to what will best serve the educational interests of the State (N.Y. Const. art. XI,

> Section 1; Matter of Bethlehem Union Free School v. Wilson, 303 N.Y. 107; Board of Education v. Board of Education, 76 App. Div. 355, aff'd 179 N.Y. 556)."

It is submitted that the combination of having the relied upon provisions in the city charter, clearly subject to change, and the subject matter being education, a state function, and the clear current exposition of the law by both this Court and the state courts, make any claim that the provision created a contract untenable.

2. Even if the statutory provisions relied upon were not part of the charter of the City of Rochester and concerned with education as its subject, the clear language of the provision does not admit it to be construed as a contract. The charter language as it finally stood by Chapter 519 of the Laws of New York, 1922, and remained until its effective repeal by the May 1975 Act was:

> "§381. Attendance of nonresident pupils. The board of education may allow the children of persons not residents of the city to attend the schools under the care and control of the board upon the payment of such tuition and upon such terms as the board may by resolution prescribe. Permission must be granted to children residing in those portions not annexed of school districts numbers two and ten of the Town of Brighton, as such districts existed on the first day of March, nineteen hundred and thirteen, of school district number five of the Town of Brighton, as the same existed on the first day of March, nineteen hundred and twenty-two, of school district number four of the Town of Greece as the same existed on the first day of March, nineteen hundred and fifteen, and of school district number six of the Town of Gates and numbers eight and ten of the Town of Greece, as the same existed on the first day of March, nineteen hundred and eighteen, to attend without the payment of tuition schools under the care and control of the board. The board must cause to be made and filed in its office maps showing the boundaries of the aforesaid districts as existing on said respective dates."

The language is a direction to the Board of Education of the City of Rochester to give permission to unidentified children residing in a particular area to attend the city schools without payment of tuition. The language does not address specific parties even though it may have had an effect, though not a purpose, to provide general encouragement to property owners to move into the areas so identified. The fact that specific parties are not addressed is very important to the law of contract at the time since in 1903 this Court had ruled in *Wisconsin and Michigan Railway v. Powers,* 101 U.S. 379 that Michigan's repeal of an earlier tax exemption granted to certain qualifying railroads was not an impairment of the obligation of contract. The action of the railroads therein was directly encouraged by the statute, as opposed to the indirect encouragement herein. But, nevertheless, this Court, speaking through Mr. Justice Holmes, states the following at page 385:

> "The broad ground in a case like this is that, in view of subject matter, the legislature is not making promises, but framing a scheme of public revenue and public improvement. In announcing its policy and providing for carrying it out it may open a chance for benefits to those who comply with its conditions, but it does not address them, and therefore it makes no promise to them. It simply indicates a course of conduct to be pursued, until circumstances or its view of policy change. *It would be quite intolerable if parties not expressly addressed were to be allowed to set up a contract on the strength of their interest in and action on the faith of a statute, merely because their interest was obvious and their action likely, on the face of the law.*" (emphasis added)

In addition to not addressing specific parties, there was no bargained for exchange. The free tuition privilege was a gratuity on the part of the state legislature insofar as the property owners in the annexed parts of the school districts were concerned. There was no consideration, which may be another way of expressing the same contractual infirmity. Such

a gratuity creates no vested rights. In *Dodge v. Board of Education*, 302 U.S. 74 (1937) at page 79, Justice Roberts stated "If, upon a construction of a statute, it is found that the payments are gratuities, involving no agreement of the parties, the grant of them creates no vested rights".

No time limit was stated, which is an important element of any express contract, and which leaves a critical contract term subject to implication.

By the time frame of 1915-1922 it was a well established principle of interpretation in a contract with a state that all ambiguities in the language relied upon would be read in favor of the state. (see *Charles River Bridge v. Warren Bridge*, 11 Pet. 420 (U.S. 1837).

3. The decisions of the state courts in this case, though not conclusive upon this Court, are entitled to considerable weight. Whether there was a contract created by statuatory enactments or as a result of those enactments, is a federal question for the purposes of this motion. But that federal question depends upon an analysis of the settled rules of state decisions prior thereto, and decisions made subsequently, as herein, are to be followed unless "palpably erroneous". A succinct summary of this concept was contained in *Phelps v. Board of Education*, 300 U.S. 319, 322-323 (1937) by Mr. Justice Roberts as follows:

> "This court is not bound by the decision of a state court as to the existence and terms of a contract, the obligation of which is asserted to be impaired, but where a statute is claimed to create a contractual right we give weight to the construction of the statute by the courts of the state. (citations omitted) . . . Here those courts have concurred in holding that the act of 1909 did not amount to a legislative contract with the teachers of the state and did not become a term of the contracts entered into with employes by boards of education. *Unless these views are palpably erroneous we should accept them*" (emphasis ours)

We do not know of a suggestion that the New York Courts have in any way manipulated local law to evade a federal constitutional question. In the case at bar, the state courts were in total agreement. The trial justice and five justices of the Appellate Division were unanimous in their holding that no contract had been shown to exist and seven judges of the Court of Appeals were unanimous that no substantial constitutional question was directly involved.

CONCLUSION

For the foregoing reasons, the Appellee moves that this appeal be dismissed.

Respectfully submitted,

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No. 81-50

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1981

PRUDENCE J. CAMARDO; ARTHUR FALZONE, HENRY J. PAPE, IVAN WAHLS, LILLIAN WAHLS, and all persons similarly situated, BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT No. 4, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 10, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 8, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 6; All of the TOWN OF GREECE, and DANIEL A. STETZEL, SR., *Appellants,*

vs.

CITY OF ROCHESTER, N.Y., BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT, BOARD OF

(Over)

Appeal from the Court of Appeals of the State of New York

BRIEF FOR DEFENDANTS-APPELLEES, CITY OF ROCHESTER AND BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT ON THEIR MOTION TO DISMISS THE APPEAL UNDER SUPREME COURT RULE 16(b) ON THE GROUND THAT IT DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION

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Appellees.

Action No. 1

ELLEN ANDERSON and CHARLES and GERTRUDE LA VALLE, and all persons similarly situated, BERNADETTE UEBLACKER and JAMES and PATRICIA BRITT, and all persons similarly situated,

Appellants,

vs.

THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT, and THE STATE OF NEW YORK,

Appellees.

Action No. 2

MOTION TO DISMISS

Appellees, City of Rochester, N.Y. and Board of Education of the City School District, move to dismiss the appeal herein, on the ground that no substantial Federal question has been presented.

COUNTER STATEMENT OF THE QUESTION PRESENTED

Did three annexation statutes passed between 1915 and 1922, which caused *de facto* elimination of school taxes for residents living within specific geographic boundaries, create vested rights for appellants to be free from school taxes upon appellants' subsequent purchases of property within the designated geographic areas.

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In The

Supreme Court of the United States

October Term, 1981

PRUDENCE J. CAMARDO; ARTHUR FALZONE, HENRY J. PAPE, IVAN WAHLS, LILLIAN WAHLS, and all persons similarly situated, BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT No. 4, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 10, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 8, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 6; All of the TOWN OF GREECE, and DANIEL A. STETZEL, SR.,

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Appellees.

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Appeal From The Court Of Appeals Of The State Of New York

BRIEF FOR DEFENDANTS-APPELLEES, CITY OF ROCHESTER AND BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT ON THEIR MOTION TO DISMISS THE APPEAL UNDER SUPREME COURT RULE 16(b) ON THE GROUND THAT IT DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION

THE STATE STATUTES INVOLVED AND THE NATURE OF THE CASE

Appellants contend that three annexation statutes which amended the City Charter created vested rights. These statutes were Chapter 359 of the Laws of New York, 1915, Chapter 547 of the Laws of New York, 1918, and Chapter 519 of the Laws of New York, 1922. Each law increased the territory of the City of Rochester. In addition, police and fire protection was broadened. Water and sewer lines were extended. Trolley service was enlarged. Harbor and beach facilities were improved, and a location for a hospital was secured.

These annexations divided previously existing school districts. Annexed portions became part of the City School District, and school facilities within the annexed territories became City School District property. The unannexed parts of the school districts maintained their identities, but they were left without facilities to educate pupils. The State Legislature

alleviated this problem by requiring the City School District to permit children living in the unannexed portions of the school districts to attend city schools tuition free.

The unannexed school districts continued in existence until 1975, when they were abolished and incorporated into the Greece Central School District by Chapter 125 of the Laws of New York, 1975. These abolished districts are the corporate appellants herein.

The annexation statutes did not disturb the power of the appellant school districts to levy taxes, but no taxes were levied by any of the appellant districts until 1971, when one of the appellant districts levied a small tax to purchase vehicles to transport some pupils. Chapter 125 of the Laws of New York, 1975, caused the residents of the appellant school districts to become fully subject to Greece Central School District taxes over a five year, phase-in period. The tax levied by the Greece Central School District was much greater than the previous tax, because the tax had to cover the budget for salaries, buildings, transportation, supplies, debt service, et cetera. Prior to 1975, the appellant districts had no budget to fund, except for the few vehicles already mentioned.

This increased tax burden is the reason for this lawsuit. Appellants' alleged desires to protect their rights to have children educated by the City School District tuition free is a sham that can be shown from the law and the proof elicited at trial.

The 1975 law required the City School District to provide education to pupils living in the appellant districts who were attending city schools in 1975. This right to an education remained tuition free to the pupils. The obligation extended to siblings, and the obligation continued until they graduated from high school. None of the appellants exercised their right to have their children educated in the city schools. Ten residents

testified during the trial. Only three had children attending city schools when the challenged law was passed in 1975. There was no proof that any of the witnesses' children were attending city schools at the time of trial in November, 1978. Each witness did testify with respect to the benefits they had enjoyed as a result of not having to pay school taxes.

ARGUMENT

THIS CASE PRESENTS NO SUBSTANTIAL FEDERAL QUESTION

POINT I

Appellants have not established the elements required for this Court to find a contract arising out of the annexation statutes of 1915, 1918 and 1922.

Although some statutes may create vested contract rights, the principal function of a legislature is not to make contracts, but to make laws which declare the policy of the state. These laws are subject to repeal by subsequent legislatures. *Indiana ex rel Anderson v. Brand,* 303 U.S. 95, 100 (1937); *Dodge v. Board of Education,* 302 U.S. 74, 79, (1937); *Cook v. City of Binghamton,* 48 N.Y.2d 323, 329 (1979). To prove the existence of vested contract rights arising out of legislation, the appellants must show that a promise was given them and that they have given consideration. *Wisconsin & Michigan Railway Company v. Powers,* 191 U.S. 379 (1903). The appellants must also show an intent on the part of the legislature to be bound. *Cook v. Binghamton,* supra, at 330, which relies on *Indiana,* supra.

POINT II

This Court gives great weight to the views of the highest court in deciding cases of this nature.

The question whether a contract has been created by statute is federal, but the decision is based upon an appraisal of the statutes of the state and the decisions of its courts. This Court gives great weight to the views of the state's highest court in determining the existence of the contract. *Indiana,* supra at 100; *Dodge,* supra, at 79 and *Phelps v. Board of Education,* 300 U.S. 319, 322 (1936).

POINT III

The annexation statutes do not create private contract rights, because no promise was given by the legislature.

The case of *Pennsylvania Railroad Company v. State,* 11 N.Y.2d 504 (1962) destroys the appellants' arguments in this case. In *Pennsylvania Railroad,* the legislature had passed a law pursuant to negotiations between the Long Island Transit Authority, on the one hand, and the Long Island Railroad Company and the Pennsylvania Railroad, on the other hand. The law permitted railroads that qualified as redevelopment corporations to raise their fares without the prior approval of the Public Service Commission. Four years later, the right to obtain fare increases without prior approval was abolished by amendment to the law. The railroad sued the state on the ground that the amendment had unconstitutionally impaired its contract which arose under the original statute. It alleged that it had negotiated with an agency of the state, that the negotiations had led to the original statute and that it had performed in accordance with a certificate of approval issued by the Public Service Commission.

The Court of Appeals in a caustic opinion reiterated the presumption that legislation is not intended to create private

contractual rights or vested rights, but merely declares a policy to be pursued until the legislature shall ordain otherwise. The court went on to say:

> 'It is never to be assumed,' this court has said, 'that the State has * * * fettered its power in the future, except upon clear and irresistable evidence that the engagement was in the nature of a private contract, as distinguished from a mere act of general legislation; and that such in the particular instance, was the actual and deliberate intention of the State authorities.' (Citations omitted) *Pennsylvania Railroad,* supra at 511.

The court required that a particular specified party be named in the statute before it could create contract rights.

> There is, of course, a distinction between a special legislative act granting a right to a *particular specified party* and a statute affording 'general encouragement to all persons to engage in a certain class of enterprise.' *Pennsylvania Railroad,* supra at 512 (emphasis added)

There are no particular specified parties set forth in the annexation statutes. These laws refer to "children" residing within certain territorial boundaries.

The need to have a particular specified party named in the legislation before contractual rights attach was explained in *Wisconsin & Mighigan Railway Company v. Powers,* supra, and it was repeated in *Pennsylvania Railroad,* supra.

> 'The broad ground in a case like this,' wrote Mr. Justice Holmes, 'is that, in view of the subject matter, the legislature is not making promises, but forming a scheme of public revenue and public improvement. In announcing its policy and providing for carrying it out it may open a chance for benefits to those who comply with its conditions, *but it does not address them, and therefor, it makes no promises* to them.' *Pennsylvania Railroad,* supra at 512. (emphasis added)

Without addressing a particular specified party, no promise can be made.

POINT IV

The appellants gave no consideration.

The appellants allege detrimental reliance as their consideration for the ongoing obligation to educate their children tuition free. Even if detrimental reliance was proven, it would not be sufficient to create contract rights in this situation.

In the *Wisconsin & Michigan Railway* case Justice Holmes recognized that the plaintiff had acted to its detriment by investing in railroad construction and operation within a designated area. This was not sufficient to create a binding statutory obligation analogous to contract.

> [T]he other elements are that the promise and the detriment are the conventional inducements each for the other. No matter what the actual motive may have been, by the express or implied terms of the supposed contract, the promise and the consideration must purport to be the motive each for the other, in whole or at least in part. It is not enough that the promise induces the detriment or that the detriment induces the promise, if the other half is wanting. *Wisconsin & Michigan Railway Company v. Powers,* supra at 386.

The Legislature had none of the plaintiffs in mind when it required tuition free education in City schools. Therefore, any alleged promise could not have been induced by the alleged detriment incurred by the plaintiffs.

> It would be quite intolerable if parties not expressly addressed were to be allowed to set up a contract on the strength of their interest in, and action on the faith of, a statute, merely because their interest was obvious and their action likely, on the face of the law. *Pennsylvania Railroad,* supra at 512.

POINT V

The language of the three annexation statutes does not indicate an intent on the part of the Legislature to create any contractual relationships, nor is there court precedent interpreting similar language as creating contract rights.

The appellants cite the case of *Indiana,* supra for the proposition that contracts may be created by statute even when there is no specifically named party. This reliance is unfounded because the case is unique. The courts of the state of Indiana had long considered the relationship between teacher and school districts as contractual in nature. In addition, the law in question referred to "contract" 25 times. The Court of Appeals in rejecting *Indiana* said,

> In *Indiana* (supra) for example, the statute in question employed the term 'contract' a total of 25 times, defining the relation of teachers to the school district and stating the conditions for a teacher's termination. Moreover, 'the tenor of the act indicates that the word 'contract' was not used inadvertently or in other than its usual legal meaning' and prior decisions of the State's highest court interpreting the statute had uniformly held the rights created pursuant to it to be contractual in nature. *Cook v. City of Binghamton,* supra at 330.

It should be noted that Mr. Justice Roberts not only wrote the opinion in the *Indiana* case, but he also authored *Phelps v. Board of Education,* supra and *Dodge v. Board of Education,* supra (which were two cases involving situations similar to the *Indiana* case arising in New Jersey and Illinois). Contrary to *Indiana,* he found no constitutional impairment of contract. There was no judicial history treating the acts involved as contractual in nature, and there were no references in either statute to contractual language.

The language of the annexation statutes does not mention contract. The statutes make no promise. They name no parties.

No cases have been cited in which the Court of Appeals of New York has interpreted language similar to that in the annexation statutes as "susceptible of no other reasonable construction than that a contract was intended." *Pennsylvania Railroad,* supra at 511. At no time prior to the passage of the annexation statutes, nor since, has the Court of Appeals created a precedent upon which residents in 1915 or the appellants could rely.

POINT VI

The corporate appellants have no contract rights.

The Constitution of New York and judicial precedent establish the legislature as having plenary power in the area of education. The power can be exercised to alter or abolish school districts even at the expense of the inhabitants of an affected district.

In *Board of Education v. Board of Education,* 76 App. Div. 355 (1902), affirmed without opinion, 179 N.Y. 556 (1904), it was ruled that the legislature could reform the boundaries of school districts despite the argument that certain obligations had been created prior to the reformation which the reformation would affect. The controversy arose, because the change in boundries caused certain inhabitants to be subject to higher taxes. The Court found that the New York Constitution reserved power in the legislature to alter or revoke its statutes, and when such a change in the law occurred, no impairment took place.

> A legislative grant to a corporation of such privileges, if not forbidden by the Constitution, may be a contract; but where one of the conditions of the grant is that the Legislature may alter or revoke it, a law altering or revoking, or which has the effect of altering or revoking the exclusive character of such privileges cannot be regarded as one impairing the obligation of contract,

> whatever may be the motive of the Legislature or however harshly such legislation may operate in the particular case upon the corporation or parties affected by it. *Board of Education*, supra, at 358.

In 1915, the New York Constitution did provide a reservation of power to the legislature to alter all statutes and the common law.

> Such parts of the common law, and of the acts of the legislature of the Colony of New York * * *; and such acts of the Legislature of this State as are now in force, shall be and continue the law of the State, subject to such alterations as the Legislature shall make concerning the same. *N.Y. Const. Art. I*, S.16 (1894); *N.Y. Const. Art. I*, S.16 (1915); *N.Y. Const. Art. I*, S.14 (1938).

The annexation statutes of 1915, 1918 and 1922 were subject to this constitutional provision allowing alteration.

In 1927 the Appellate Division, Fourth Department, of the State of New York reiterated the rule that the legislature has complete and plenary power to alter school districts without consent of the district. The court also said the rights of the individuals in the territory affected are not violated, despite an increased tax burden. *Adriaansen v. Board of Education*, 222 App. Div. 320, affirmed 248 N.Y. 542 (1928).

In 1944, Motion Term decided *Board of Education v. Stoddard*, 49 N.Y.S. 38 (S. Ct., Albany County). The petitioner alleged an impairment of contract caused by an amendment to the education law which changed state aid to school districts. Relying upon *Hunter v. City of Pittsburg*, 207 U.S. 161 (1907) and *N.Y. Const. Art. XI*, S.1 (1938) which gave plenary power to the legislature to provide a state-wide system of free education, the court ruled that despite the incurrence of a debt made in reliance upon a statutory state aid formula, the legislature could amend the statute. It found that the original statute did not create a contract.

"It would be unnecessary and unprofitable to analyze these decisions or quote from the opinions rendered. We think the following principles have been established by them and have become settled doctrines of this court, to be acted upon wherever they are applicable. Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the government powers of the state as may be entrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state. Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the state within the meaning of the Federal Constitution. The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation.

"All this may be done, conditionally, with or without the consent of the citizens, or even against their protest. In all these respects the state is supreme, and its legislative body, conforming its action to the state Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and property owners may, by such changes, suffer inconvenience, * * * burden of increased taxation, or for any other reason, they have no right, by contract or otherwise, in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the state, and those who legislate for the state

> are alone responsible for any unjust or oppressive exercise of it." *Board of Education v. Stoddard,* 49 N.Y.S.2d 38, 40.

The Motion Term was affirmed by the Appellate Division and the Court of Appeals. *Board of Education v. Stoddard,* supra, 268 App. Div. 936 (1944); 294 N.Y. 667 (1945).

Again, in 1951, the Court of Appeals ruled that education was a matter of State interest and the school district boundaries could be changed according to current educational needs and good educational principles. *Matter of Bethlehem Union Free School v. Wilson,* 303 N.Y. 107 (1951).

POINT VII

The annexation statutes created *de facto* tax exemptions which are not favored by the law.

Appellants cite *People ex rel. Troy Union Railroad Company v. Mealey,* 254 U.S. 47 (1920) as authority for the rule that legislation may create private contract rights where the statute grants a franchise, exemption or privilege to a corporation and the corporation acts in reliance upon the statute. As pointed out above in Point III, this is true so long as the corporation is specifically named in the legislation. Also, as discussed in Point VI, this rule does not apply to municipal corporations or school districts, nor does it apply where the Constitution has reserved the legislature's right to alter legislation.

The rule did not even apply to the petitioner, Troy Union Railroad Company. The Supreme Court upheld the Court of Appeals' decision in *People ex rel. New York Central and Hudson River Railroad Company v. Mealey,* 224 N.Y. 187 (1918) that the law in question was subject to repeal.

The City of Troy and four railroads had entered into a written agreement to build a terminal to be owned by the railroads, through purchase of stock. The City of Troy was to

finance the project. The city also agreed to join in an application to the legislature that the corporation be exempt from taxation above the amount of the capital stock which was $30,000.00. If the law were not passed, the city agreed to refund the taxes imposed which exceeded $30,000.00. The act was passed, but later repealed. The Court of Appeals ruled that the statute which acquiesced in the arrangement between the parties did not bind the State.

> Exemptions from taxation are not favored by law, and will not be sustained unless such clearly appears to have been the intent of the legislature. * * * such contract should receive a strict interpretation, and every reasonable doubt be resolved in favor of the taxing power. Indeed, it is not too astute to seize upon evidence tending to show either that such exemptions were not originally intended, or that they have become inoperative by changes in the original constitution of the companies. *People ex rel. N.Y.C. & H.R.R.R. Co. v. Mealey*, supra at 197.

There is no proof in this case that the legislature intended a tax exemption for residents living within the appellant school districts.

CONCLUSION

This Motion should be Granted and the appeal Dismissed under Rule 16(b) of the Rules of the Supreme Court upon the ground that no substantial Federal question has been presented, with costs and disbursements to Appellees.

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On the Brief:
REYNOLDS E. HAHN, Esq., *Of Counsel*

APPENDICES

APPENDIX A — Constitution of the United States, Article I, Section 10

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article I, Section 10 of the Constitution of the United States provides:

"§10. Restrictions upon powers of states

Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Product of all Duties and Imports, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay."

APPENDIX B — Constitution of the State of New York, Article I, Section 16, (1894), Renumbered Article I, Section 14 (1938)

§ 14. [Common law and acts of the state legislatures]

Such parts of the common law, and of the acts of the legislature of the colony of New York, as together did form the law of the said colony, on the nineteenth day of April, one thousand seven hundred seventy-five, and the resolutions of the congress of the said colony, and of the convention of the State of New York, in force on the twentieth day of April, one thousand seven hundred seventy-seven, which have not since expired, or been repealed or altered; and such acts of the legislature of this state as are now in force, shall be and continue the law of this state, subject to such alterations as the legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to this constitution, are hereby abrogated.

Formerly § 16, renumbered 14 and amended Nov. 8, 1938, eff. Jan. 1, 1939.

APPENDIX C — The Constitution of the State of New York, Article IX, Section 1 (1894), Renumbered Artice XI, Section 1 (1938)

§ 1. [Common schools]

The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.

Formerly Art. 9, § 1, renumbered Art 11, § 1, Nov. 8, 1938, eff. Jan. 1, 1939.

APPENDIX D — Chapter 547 of the Laws of New York, 1918, Section 8

CHAPTER 547 OF THE LAWS OF NEW YORK, 1918

The pertinent Section of the Act provides as follows:

"AN ACT to amend chapter seven hundred and fifty-five of the laws of nineteen hundred and seven, entitled "An act constituting the charter of the city of Rochester," generally.

Became law May 10, 1918, with the approval of the Governor. Passed, three-fifths being present.

Accepted by the City.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§8. Such chapter is further amended by adding thereto a new section to be numbered three hundred and eighty-one, and to read as follows:

§381. Attendance of nonresident pupils. The board of education may allow the children of persons not residents of the city to attend the schools under the care and control of the board upon the payment of such tuition and upon such terms as the board may by resolution prescribe. Permission must be granted to children residing in those portions not annexed of school districts numbers two and ten of the town of Brighton, as such districts existed on the first day of March, nineteen hundred and thirteen, of school district number four of the town of Greece as the same existed on the

APPENDIX D — Chapter 547 of the Laws of New York, 1918, Section 8

first day of March, nineteen hundred and fifteen, and of school district number six of the town of Gates and numbers eight and ten of the town of Greece, as the same existed on the first day of March, nineteen hundred and eighteen, to attend without the payment of tuition schools under the care and control of the board. The board must cause to be made and filed in its office maps showing the boundaries of the aforesaid districts as existing on said respective dates."

APPENDIX E — Chapter 129 of the Laws of New York, 1975

CHAPTER 129 OF THE LAWS OF NEW YORK, 1975

"AN ACT to abolish certain school districts in Monroe county and to include those districts in central school districts and to make an appropriation therefor

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Notwithstanding any other provisions of any general, special or local laws, rules or regulations to the contrary:

a. Greece common school districts numbers eight and ten, Greece union free number four school district and the northern part of Gates common school district number six, which is contained within the town of Greece, Monroe county, New York, are hereby abolished and Greece union free number four school district, Greece common school districts numbers eight and ten and the northern part of Gates common school district number six, which is contained within the town of Greece, Monroe county, New York, are added to and made a part of Greece central school district of the town of Greece, Monroe county.

b. The southern part of Gates common school district number six is herreby abolished and that part which is contained within the town of Gates is added to and made a part of Gates Chili central school district.

c. Brighton common school district number two and Brighton ten common school district are hereby abolished and made a part of Penfield central school district.

d. Brighton five common school district is hereby abolished and made a part of the Rush-Henrietta central school district.

§2. a. Real or personal property possessed by any of the

school districts being abolished herein shall remain the property of the said district being abolished.

b. Any district being abolished herein which on the effective date of this act, owns real or personal property shall continue to exist in law for the purpose of disposing of and settling any property interests it may be possessed of and to that end the trustees and other officers shall continue in office and have whatever authority necessary to implement the provisions of this subdivision.

c. The provisions of sections fifteen hundred seventeen and fifteen hundred eighteen of the education law shall apply to all cases in section one hereof.

§3. a. The city school district of the city of Rochester shall guarantee seats in the schools of the city school district to all students from the common school districts, or union free school district, abolished by this act who are enrolled or registered for attendance in schools in the city school district as of May thirty-first, nineteen hundred seventy-five and siblings of such subject, however, to a rate of tuition computed in accordance with approved state procedures.

b. The central school districts designated in section one of this act shall be obligated to pay the tuition as provided for in subdivision a of this section for students residing in the respective central school districts who, on and after July first, nineteen hundred seventy-five, choose to remain in schools in the city school district, and shall also be obligated, on and after such date, to provide transportation as required by law or as authorized by the voters of the respective central school districts. Such obligation shall extend only to students who were enrolled or registered for attendance in schools in the city school district as of May thirty-first, nineteen hundred seventy-five and siblings of such students and shall continue until such students and siblings complete the twelfth grade.

c. With the exception of those instances enumerated in this section, the city of Rochester, on and after July first, nineteen hundred seventy-five shall no longer be required to accept students from the school districts being abolished herein into its school district without the payment of tuition.

§4. a. Real property in such common school districts and the union free school district abolished in section one of this act shall be subject to taxation pursuant to article thirteen of the real property tax law; provided, however, that such real property shall be exempt from taxation by the central school district in which located to the extent of eighty percent of the tax which would otherwise be so payable for the fiscal year commencing July first, nineteen hundred seventy-five, to the extent of sixty percent of such tax for the fiscal year commencing July first, nineteen hundred seventy-six, to the extent of forty percent of such tax for the fiscal year commencing July first, nineteen hundred seventy-seven, and to the extent of twenty percent of such tax for the fiscal year commencing July first, nineteen hundred seventy-eight.

b. The central school districts in which real property is located, which property is exempted from taxation by the foregoing subdivision of this section, shall be held harmless from loss of revenue because of such exemption. Such central school districts shall make all budget calculations, shall be treated for all state aid and apportionment of public money purposes, and shall levy its local property taxes as if such real property were not exempt. The total amount of the exempt portion of any such real property taxes, as provided in subdivision a of this section shall be billed to the commission of education on or before October first of each such year and such commissioner is hereby authorized and directed to apportion such amounts to such central school districts on or before November first of each such year, provided that such moneys shall be treated as tax moneys for

all purposes of article seventy-three of the education law and provided further, that no interest or penalties shall be charged by anyone on such payments, provided further, that notwithstanding the provisions of any general or special law, the commissioner of education, in computing the aid ratio of any central school district of which the common school districts and union free school district referred to in section one of this act shall have become a part, shall permit the use of the additional resident weighted average daily attendance for aid ratio purposes during the school years nineteen hundred seventy-five-seventy-six and nineteen hundred seventy-six-seventy-seven, which said additional resident weighted average daily attendance shall be that of students from such former common school districts and union free school district who shall be attending the schools of such central school districts during such two school years.

§5. The sum of two million five hundred thousand dollars ($2,500,000), or so much thereof as may be necessary, is hereby appropriated out of any monies in the state treasure in the general fund to the credit of the local assistance fund, not otherwise appropriated, to the education department for the purposes of section four of this act, payable on vouchers certified or approved by the commissioner of education upon audit and warrant of the state comptroller as provided by law.

§6. This act shall take effect May thirty-first, nineteen hundred seventy-five, except that section five thereof shall take effect July first, nineteen hundred seventy-five and except further that for the purposes of article seventy-three of the education law, this act shall take effect July first, nineteen hundred seventy-five."

APPENDIX F — Order of the Court of Appeals of the State of New York (filed April 9, 1981)

STATE OF NEW YORK
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the ninth day of April A.D. 1981

PRESENT, HON. LAWRENCE H. COOKE, *Chief Judge, presiding.*

4 *Mo. No. 391 SSD 48*

Prudence J. Camardo, et al.,

Appellants,

vs.

The Board of Education of the City of Rochester and the City of Rochester, et al.,

Respondents.

(and another action.)

The appellants having filed notice of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal be and the same hereby is dismissed without costs, by the Court *sua sponte,* upon the ground that no substantial constitutional question is directly involved.

/s/ JOSEPH W. BELLACOSA
Clerk of the Court

APPENDIX G — Order and Memorandum of the Appellate Division of the Supreme Court of New York, Fourth Judicial Department (filed December 12, 1980)

SUPREME COURT OF
THE STATE OF NEW YORK
APPELLATE DIVISION,
FOURTH JUDICIAL DEPARTMENT

PRESENT: SIMONS, J.P., HANCOCK, SCHNEPP, CALLAHAN, MOULE, JJ.

Prudence J. Camardo, et al.,

Appellants,

v.

The Board of Education of the City School District and The City of Rochester, et al.,

Respondents,

And Another Action.

The above named Prudence J. Camardo, et al. having appealed to this Court from a judgment of the Supreme Court, entered in the Monroe County Clerk's office on April 3, 1979 and said appeal having been argued by Jeffrey Marks of counsel for appellants, Reynolds Hahn of counsel for respondents Board of Education of City School District and City of Rochester Shirley Siegel of counsel for respondent, State of N.Y. William Easton of counsel for respondent Board of Education of Greece Central School District Robert Wendt of counsel for respondent Board of Education of Rush-Henrietta Central School District, and due deliberation having been had thereon

It is hereby ORDERED, That the judgment so appealed from be and the same hereby is unanimously affirmed with costs.

Memorandum, which is hereby made a part hereof.

Entered: DEC 12 1980

MARY F. ZOLLER, *Clerk*

APPENDIX G — Order and Memorandum of the Appellate Division of the Supreme Court of New York, Fourth Judicial Department (filed December 12, 1980)

995. (Monroe Co.) — Prudence J. Camardo, et al, Appellants v. The Board of Education of the City School District and the City of Rochester, et al, Respondents, and Another Action. — Judgment unanimously affirmed with costs. Memorandum: By chapter 359 of the Laws of 1915, chapter 547 of the Laws of 1918 and chapter 519 of the Laws of 1922, the City Charter of Rochester was amended to bring lands formerly a part of the Towns of Greece and Brighton within the city boundaries. Permission was granted to children in unannexed school districts, whose school facilities were annexed, to attend Rochester city schools without payment of tuition. The tuition-free attendance of these nonresident children continued until enactment of chapter 125 of the Laws of 1975 (May 1975 Act). The May 1975 Act provides that these unannexed school districts be abolished and added to existing central school districts; that the city school district guarantee seats to all students from the abolished districts and their siblings, enrolled in city schools as of May 31, 1975; that the property owners in the abolished districts be required to pay the taxes of the appropriate central school district at the rate of 20 percent the first year, increasing by 20 percent each year to 100 percent the fifth year; and that the State pay 2.5 million dollars to the central school district for revenues lost by operation of these tax exemptions.

Plaintiffs brought this action alleging that the earlier legislation created a contract which promised them the right to maintain their own school districts and the right to attend city schools tuition-free, and that the contract could not be repudiated by the May 1975 Act. Plaintiffs contend that the May 1975 Act unconstitutionally impairs the obligation of contract, and, in the alternative, they challenge its validity on four different constitutional grounds. At the close of plaintiffs' case, defendants moved for declaratory judgment. The court

APPENDIX G — Order and Memorandum of the Appellate Division of the Supreme Court of New York, Fourth Judicial Department (filed December 12, 1980)

granted defendants' motion and entered judgment dismissing the complaint, holding that plaintiffs failed to prove a breach of any contractual obligation between the City, State and affected homeowners; that plaintiffs failed to prove any cause of action against defendants; and that the provisions of the May 1975 Act are not violative of either the Constitution of the United States or the State of New York.

In determining whether subsequent legislation impairs the obligation of a contract, the essential question is the existence of a contractual relation (Cook v City of Binghamton, 48 NY2d 323). While the presumption against the existence of a contract is stronger where plaintiff relies upon general rather than special legislation, the elements necessary to a contractual agreement must still be shown; i.e., that the language and circumstances manifest a legislative intent to create private rights of a contractual nature enforceable against the State, and that contractual elements such as bargained-for exchange between the parties, consideration and detrimental reliance exist (Cook v City of Binghamton, supra; Pennsylvania R.R. Co. v State of New York, 11 NY2d 504; People v Brooklyn Garden Apartments, Inc., 283 NY 373). Plaintiffs failed to prove any of the elements necessary to a contractual relation; therefore, their claim of contract impairment fails.

Plaintiffs' constitutional challenge of certain provisions of the May 1975 Act appears to be an attempt to invalidate the reorganization provision as unconstitutional by association, since they claim that it would not be severable from the alleged unconstitutional portions. The challenges are without merit and, even had they been found otherwise, the severability clause of the Act would allow the reorganization plan to stand apart. (Appeals from Judgment of Monroe Supreme Court, Blauvelt, J. — Declaratory Judgment.) Present: Simons, J.P., Hancock, Schnepp, Callahan, Moule, JJ.

APPENDIX H — Judgment of the New York State Supreme Court, County of Monroe (filed April 3, 1979)

ACTION NO. 1

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

PRUDENCE J. CAMARDO, 793 Lee Road, Rochester, New York; ARTHUR FALZONE, 1514 Ridgeway Ave., Rochester, New York; HENRY J. PAPE, 1656 Creek Street, Rochester, New York; IVAN WAHLS and LILLIAN WAHLS, 223 Delmar Road, Rochester, New York; BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT NO. 4, 537 Denise Road, Rochester, New York; BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT NO. 10, 263 Bakerdale Road, Rochester, New York; BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT NO. 8, 1221 Lee Road, Rochester, New York; BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT NO. 6, 729 Lee Road, Rochester, New York; DANIEL A. STETZEL, SR., 537 Denise Road, Rochester, New York,

Plaintiffs,

vs.

CITY OF ROCHESTER, NY, City Hall, Rochester, New York; BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT, 13 S. Fitzhugh Street, Rochester, New York; BOARD OF EDUCATION OF GREECE CENTRAL SCHOOL DISTRICT, 1790 Latta Road, Rochester, New York; STATE OF NEW YORK: BRIGHTON COMMON SCHOOL DISTRICT, 600 Grosvenor Road, Rochester, New York; BRIGHTON TEN COMMON SCHOOL DISTRICT, 41 O'Connor Road, Fairport, New York; BRIGHTON FIVE COMMON SCHOOL DISTRICT, 41 O'Connor Road, Fairport, New York; BOARD OF EDUCATION OF GATES-CHILI CENTRAL SCHOOL DISTRICT, 910 Wegman

APPENDIX H — Judgment of the New York State Supreme Court, County of Monroe (filed April 3, 1979)

Road, Rochester, New York; BOARD OF EDUCATION OF PENFIELD CENTRAL SCHOOL DISTRICT, 2590 Atlantic Avenue, Penfield, New York; BOARD OF EDUCATION OF RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT, 2034 Lehigh Station Road, Rochester, New York,

Defendants.

ACTION NO. 2

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

ELLEN ANDERSON, 200 Norman Road, Rochester, New York and CHARLES and GERTRUDE LA VALLE, 110 Bastian Road, Rochester, New York, as residents, property owners and taxpayers residing in former Brighton five common school district, on behalf of themselves and all other similarly situated residents, property owners and taxpayers residing in said district, and BERNADETTE UEBLACKER, 560 E. River Road, Rochester, New York; JAMES and PATRICIA BRITT, 165 Bastian Road, Rochester, New York, as residents, property owners, taxpayers and parents of school age children residing in former Brighton five common school district, on behalf of themselves and all other similarly situated parents residing in said district,

Plaintiffs,

vs.

THE CITY OF ROCHESTER, City Hall, Rochester, New York; THE BOARD OF EDUCATION OF THE CITY OF ROCHESTER, 13 S. Fitzhugh Street, Rochester, New York; THE BOARD OF EDUCATION OF THE RUSH-

APPENDIX H — Judgment of the New York State Supreme Court, County of Monroe (filed April 3, 1979)

HENRIETTA CENTRAL SCHOOL DISTRICT, 2034 Lehigh Station Road, Rochester, New York; and THE STATE OF NEW YORK,

Defendants.

The issues in this action for declaratory judgment having come on to be heard before this Court at a Trial Term thereof held at the Hall of Justice in the City of Rochester, New York before Justice Arthur Ervin Blauvelt without a jury on November 6, 8, 9, 13 and 14, 1978 and the Plaintiffs in Action No. 1 having appeared by Culley, Marks, Corbett, Tanenbaum, Reifsteck and Potter, William M. Marks, Burton D. Tanenbaum and Jeffrey P. Marks, Esqs. of Counsel; and the Plaintiffs in Action No. 2 having appeared by Robert D. O'Connell, Robert D. O'Connell and James Coniglio, Esqs. of Counsel; and the Defendant Board of Education of Greece Central School District having appeared by Easton, Bittker & DeLuca, William E. Easton and David V. DeLuca, Esqs. of Counsel; and the Defendant State of New York having appeared by Lewis J. Lefkowitz, Attorney General of the State of New York by Richard A. Dutcher, Assistant Attorney General, Paul O. Harrison of Counsel; and the Defendant City of Rochester, New York having appeared by Louis N. Kash, Corporation Counsel, Reynolds E. Hahn, Esq. of Counsel; and the Defendant Board of Education of the City School District, City of Rochester having appeared by Adam D. Kaufman, Michael B. Kirschen, Esq. of Counsel and the Defendant Board of Education of Rush-Henrietta Central School District having appeared by Robert H. Wendt, Esq. and the Plaintiffs in both Action No. 1 and Action No. 2 having presented their proofs and rested and the Court having made its Bench decision orally that the Plaintiffs have failed to prove Chapter 125 of the Laws of 1975 of the State of New York is an unconstitutional

enactment of the New York State Legislature, that Chapter 125 of the Laws of 1975 of the State of New York was a constitutional enactment which was not repugnant to either the constitution of the United States or the State of New York, and that the Plaintiffs failed to prove the breach of any contractual obligation or prove any cause of action against the Defendants and granting judgment of non-suit in favor of the Defendants dismissing the complaints of the Plaintiffs for failure to prove a cause of action and directing that judgment be entered accordingly.

Now on motion of Easton, Bittker & DeLuca, attorneys for the Defendant Board of Education of Greece Central School District it is

ADJUDGED AND DECREED that the provisions of Chapter 125 of the Laws of 1975 of the State of New York, as amended, are constitutional and have not been proven to violate either the constitution of the United States of America or the State of New York and it is further

ADJUDGED AND DECREED that the Plaintiffs have failed to prove a breach of any contractual obligation between the parties or any cause of action against the Defendants of any of them and it is further

ADJUDGED AND DECREED that the complaints herein are dismissed for failure of the Plaintiffs to prove a cause of action and it is further

ADJUDGED AND DECREED that the motions of the Defendants and Plaintiffs for Summary Judgment are denied, the motion of Defendants to strike certain testimony, to strike the answers to the interrogatories contained in Exhibit 3 and Exhibit 5 and the so called Anderson deed from Remington Anderson in 1917 is denied and the motion of the Defendant

APPENDIX H — Judgment of the New York State Supreme Court, County of Monroe (filed April 3, 1979)

City of Rochester and Board of Education of the City School District to strike certain paragraphs of the complaint is denied and it is further

ORDERED AND DECREED that all other motions on which the Court reserved decision during trial have become academic in view of the disposition of this case and are not passed upon.

ADJUDGED AND DECREED that the Defendants herein recover of the Plaintiffs' costs and disbursements of this action as taxed in the sum of $400.00 to be divided equally among the defendants.

Approved as to form:

CULLEY, MARKS, CORBETT,
TANENBAUM, REIFSTECK & POTTER

By BURTON D. TANENBAUM

ATTORNEYS FOR COMARDO, et al

ROBERT D. O'CONNELL

By

ATTORNEY FOR ANDERSON, et al

ROBERT ABRAMS, Attorney General, by
PAUL O. HARRISON, ASSISTANT ATTORNEY GENERAL

By PAUL O. HARRISON

ATTORNEYS FOR STATE OF NEW YORK

LOUIS K. NASH

By LOUIS N. KASH By REYNOLDS E. HAHAN

ATTORNEYS FOR CITY OF ROCHESTER

APPENDIX H — Judgment of the New York State Supreme Court, County of Monroe (filed April 3, 1979)

ADAM D. KAUFMAN

By ADAM D. KAUFMAN

ATTORNEY FOR CITY SCHOOL DISTRICT
CITY OF ROCHESTER

ROBERT H. WENDT

By ROBERT H. WENDT

ATTORNEY FOR BOARD OF EDUCATION
RUSH-HENRIETTA SCHOOL DISTRICT

Signed March 30, 1979.

ENTER:

/s/ ARTHUR ERVIN BLAUVELT
JUSTICE OF THE SUPREME COURT

RECEIVED
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MONROE COUNTY
CLERKS OFFICE

No. 81-50

Supreme Court, U.S.
FILED
AUG 6 1981
ALEXANDER L. STEVAS, CLERK

In The

Supreme Court of the United States

October Term, 1981

PRUDENCE J. CAMARDO; ARTHUR FALZONE, HENRY J. PAPE, IVAN WAHLS, LILLIAN WAHLS, and all persons similarly situated, BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT No. 4, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 10, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 8, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 6; All of the TOWN OF GREECE, and DANIEL A. STETZEL, SR.,

Appellants,

vs.

CITY OF ROCHESTER, N.Y., BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT, BOARD OF EDUCATION

(Over)

On Appeal From The Court Of Appeals Of The State Of New York

MOTION TO DISMISS OR AFFIRM

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Deputy Assistant Attorney General
Of Counsel

OF GREECE CENTRAL SCHOOL DISTRICT, STATE OF NEW YORK, BRIGHTON COMMON SCHOOL DISTRICT, BRIGHTON TEN COMMON SCHOOL DISTRICT, BRIGHTON FIVE COMMON SCHOOL DISTRICT, BOARD OF EDUCATION OF GATES-CHILI CENTRAL SCHOOL DISTRICT, BOARD OF EDUCATION OF PENFIELD CENTRAL SCHOOL DISTRICT, BOARD OF EDUCATION OF RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT,

Appellees.

Action No. 1

ELLEN ANDERSON and CHARLES and GERTRUDE LA VALLE, and all persons similarly situated, BERNADETTE UEBLACKER and JAMES and PATRICIA BRITT, and all persons similarly situated,

Appellants,

vs.

THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE CITY OF THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT, and THE STATE OF NEW YORK,

Appellees.

Action No. 2

Questions Presented

I. Whether, contrary to the time-honored presumptions against the creation of contract rights by statute, against the yielding of the sovereign right of taxation by contract, against the creation by statute of a tax exemption in perpetuity, against the yielding of the police power to fix the boundaries of political subdivisions, against the contracting away of the police power to determine and redetermine education policy and mechanisms for municipal financing of public education, the appellants, municipalities and citizens thereof, may claim a contract-based entitlement to free education for their children —in perpetuity— solely on the basis of 1915-1922 legislation which, while effecting a redistricting of municipal boundaries, also extended at that time a privilege of free education to children of the appellant school districts.

II. Whether, assuming *arguendo*, any contract rights emanated from the 1915-1922 legislation, subsequent legislation enacted a half century later, following urbanization and dramatic demographic changes in the affected areas, could be held materially to impair an obligation of contract when the subsequent legislation, in the context of redistricting municipal school district boundaries, merely restored to the appellant citizens the normal burden of paying for the education of their children through real property taxation, while simultaneously conferring on the taxpayers a five-year phased tax exemption and on the affected school districts a gift of $2,500,000 to ease the transition.

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No. 81-50

In The

Supreme Court of the United States

October Term, 1981

PRUDENCE J. CAMARDO; ARTHUR FALZONE, HENRY J. PAPE, IVAN WAHLS, LILLIAN WAHLS, and all persons similarly situated, BOARD OF EDUCATION OF UNION FREE SCHOOL DISTRICT No. 4, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 10, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 8, BOARD OF TRUSTEES OF COMMON SCHOOL DISTRICT No. 6; All of the TOWN OF GREECE, and DANIEL A. STETZEL, SR.,

Appellants,

vs.

CITY OF ROCHESTER, N.Y., BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT, BOARD OF EDUCATION OF GREECE CENTRAL SCHOOL DISTRICT, STATE OF NEW YORK, BRIGHTON COMMON SCHOOL DISTRICT, BRIGHTON TEN COMMON SCHOOL DISTRICT, BRIGHTON FIVE COMMON SCHOOL DISTRICT, BOARD OF EDUCATION OF GATES-CHILI CENTRAL SCHOOL DISTRICT, BOARD OF EDUCATION OF PENFIELD CENTRAL SCHOOL DISTRICT, BOARD OF EDUCATION OF RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT,

Appellees.

Action No. 1

ELLEN ANDERSON and CHARLES and GERTRUDE LA VALLE, and all persons similarly situated, BERNADETTE UEBLACKER and JAMES and PATRICIA BRITT, and all persons similiarly situated,

Appellants,

(Over)

vs.

THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE CITY OF ROCHESTER, THE BOARD OF EDUCATION OF THE RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT, and THE STATE OF NEW YORK,

Appellees.

Action No. 2

On Appeal From The Court Of Appeals Of The State Of New York

MOTION TO DISMISS OR AFFIRM

Opinions Below

The opinion of the Appellate Division of the Supreme Court of New York for the Fourth Judicial Department is printed in appellants' Appendix to the Jurisdictional Statement at A-2—A-4. It is reported at 79 AD2d 864, 434 NYS 2d 514 (1980).

The order of the New York Court of Appeals dismissing appellants' appeal is printed in appellants' Appendix to the Jurisdictional Statement at A-1. It is reported at 53 NY2d 795 (1981).

Relief Requested

This Court should dismiss the appeal on the ground that it does not present a substantial federal question. Alternatively, this Court should affirm for the reasons expressed by the courts below.

Facts

As part of its police power prerogative of determining the boundaries of its municipal subdivisions, the State of New York in the early part of this century enacted legislation to annex portions of the towns of Greece and Gates to the City of Rochester, all situate in Monroe County, New York (NY L 1915, ch 359; NY L 1918, ch 547; NY L 1922, ch 519). Those statutes offered a gratuity to the annexed districts in the form of tuition-free education at the expense of the City of Rochester for the children of citizens then residing in the annexed school districts.

In 1975, the New York Legislature again exercised its police power to redistrict its political subdivisions, by severing from the City of Rochester the school districts previously annexed, and by creating the Greece Central School District. A portion of the previously annexed district was severed from Rochester and merged with the Gates-Chili School District (NY L 1975, chs 129, 746).

As part of the 1975 legislation, the New York Legislature relieved the City of Rochester of any further obligation to provide tuition-free schooling for those children residing in the school districts previously annexed, but now independent of Rochester.

Appellants, residents of the formerly annexed school districts, and the aggrieved school districts, thereafter brought suit demanding—in perpetuity—free education for their children at the expense of the City of Rochester, *which derived no real property tax revenues whatsoever from appellants.**

Appellants claimed that the 1975 legislation impaired a contractual obligation which purportedly arose from the 1915-1922 legislation altering the affected school districts.

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* A further gratuity from the State in the form of a $2,500,000 gift to the appellant school districts was provided by the 1975 legislation, which also afforded residents thereof a five-year phased tax exemption (see A-3).

The trial court rendered a decision, after trial, declaring that plaintiffs (appellants herein) had not met their burden of proving breach of any contractual obligation (Record on Appeal before Appellate Division of New York Supreme Court, at 329-330).

Plaintiffs' unsuccessful appeals ensued, culminating in the appeal now pending in this Court.

Summary of Argument

The standard presumptions against creation of contract rights from statutes, against creation of perpetual tax exemptions, and against alienation of the basic police power attributes of a sovereign, all counsel strongly against finding any contract rights in favor of appellants.

Moreover, even if contract rights could be said to exist, the 1975 legislation, with its restoration of independence to certain school districts and various cost consideration to appellants, constituted a reasonable modification of the contract in light of the radical change in demographic conditions and the economy over a half century, which rendered conditions far different from any expectations of the parties at the time of the "contract".

ARGUMENT

Appellants' sole argument is that State legislation enacted as part of the reserved police powers, over subjects (education and municipal boundaries) that are traditionally regarded as at the very core of state interests, conferred contract-based rights that no subsequent Legislature could ever modify, regardless of changed circumstances. Appellants' assertion flies in the face of an impressive array of this Court's decisions.

A.

There is an overwhelming presumption that statures are not intended to create private contractual rights, but, instead, merely declare a policy to be pursued until the Legislature shall ordain otherwise *(Dodge v. Board of Education,* 302 US 74, 79 [1937]). "The principal function of a legislative body is not to make contracts but to make laws which declare the policy of the state and are subject to repeal when a subsequent legislature shall determine to alter that policy." *(Indiana* ex rel. *Anderson v. Brand,* 303 US 95, 100 [1938], reh. den., 303 US 667 [1938].)

A statute is treated as a contract only when the language and circumstances evince a manifest legislative intent to create private contractual rights enforceable against the State *(United States Trust Co. of New York v. New Jersey,* 431 US 1, 17 n 14 [1977], reh. den., 431 US 975 [1977]; *Dodge v. Board of Education,* 302 US at 78-79, *supra; Indiana* ex rel. *Anderson v. Brand,* 303 US at 104-105, *supra).*

Determination of the existence *vel non* of a contract is presumptively a question of state law *(Indiana* ex rel. *Anderson v. Brand, supra,* p. 100) as to which this Court consistently leans toward agreement with the state court determination, with a departure therefrom warranted only if the state court decision is manifestly wrong *(New York* ex rel. *Clyde v. Gilchrist,* 262 US 94, 97 [1923]; *Chicago Theological Seminary v. Illinois,* 188 US 662, 675 [1903]). Especially is the Court slow to depart from the judgment of the state courts denying a tax exemption allegedly founded on a contract *(New York* ex rel. *Clyde v. Gilchrist, supra,* p. 97 [HOLMES, J.]; cf. *New York Rapid Transit Corp. v. City of New York,* 303 US 573, 593 [1938]; reh. den., 304 US 588 [1938]).

In the case at bar, no contract emanated from legislation that merely implemented traditional police power functions of government, viz., declaring education policy and fixing municipal boundaries.*

B.

It is "a commonplace that the Contract Clause does not operate to obliterate the police power of the States," *(Allied Structural Steel Co. v. Spannous,* 438 US 234, 241 [1978]; *Manigualt v. Springs,* 199 US 473, 480 [1905].) All contracts implicitly include the reservation by the state of sovereign power to protect the vital interest of the people *(East N.Y. Sav. Bank v. Hahn,* 326 US 230, 232, 234-235 [1945]; *Wright v. Union Central Life Ins. Co.,* 304 US 502, 516 [1938], reh. den., 305 US 668 [1939]), as the state may not divest itself by contract of its police power *(Home Bldg. & Loan Assn. v. Blaisdell,* 290 US 398, 434 [1934]). The implementation of that police power does not constitute an impairment of the obligation of contracts if the power is exercised for a public end by means reasonably adapted to that end *(Faitoute Iron & Steel Co. v. City of Asbury, N.J.,* 316 US 502, 515 [1941]; *Home Bldg. & Loan Assn. v. Blaisdell,* 290 US at 438, *supra).*

Here, after fifty years of industrialization and urbanization, the burden of providing to suburban school districts free education at the expense of the City of Rochester — which derives no real property tax revenues whatsoever from the adjacent suburbs — became so inequitable as to warrant legislative action. "The intervention of the State in the fiscal affairs of its cities is plainly an exercise of its essential reserve power to protect the vital interests of its people ***" *(Faitoute Iron & Steel Co. v. City of Asbury, N.J.,* 316 US at 512, *supra).*

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* Failure of consideration also defeats Contract Clause claims *(West Wis. Ry. v. Supervisors,* 93 US 595, 597-598 [1876]), and most especially claims of tax immunity (B. Wright, The Contract Clause of the Constitution 180 [1938]). "Gratuitous grants are subject to repeal at the will of the grantor." *(Loc. cit.)* Here, there was no consideration because the creation and redistricting of municipalities, being political acts, do not come with the ambit of a contract *(Gomillion v. Lightfoot,* 364 US 339, 343 [1960]).

Economic interests of the state may justify exercise of its dominent protective power notwithstanding interference with contracts *(Home Bldg. & Loan Assn. v. Blaisdell,* 290 US at 444-446, *supra;* see also, *Viex v. Sixth Ward Bldg. & Loan Assn. of Newark,* 310 US 32, 40 [1940]).

In contrast to contracts between private individuals affecting matters and things in which the public has no concern, contracts with persons or corporations whose rights and powers were created for public purposes by legislat.ve acts, are not insulated by the Contract Clause from legislative abrogation. "Contracts of the latter decription are held to be within the supervising power and control of the legislature when exercised to protect the public safety, health and morals***" *(Chicago, Burlington & Quincy Railroad Co. v. Nebraska* ex rel. *Omaha,* 170 US 57, 72 [1898], quoted with approval in *Faitoute Iron & Steel Co. v. City of Asbury Park, N.J.,* 316 US at 514-515 n 2, *supra).*

Here, the re-alignment of school districts is surely within the traditional sphere of the police power.

Moreover, no alleged contract exemption from taxation is valid unless it is clear and unambiguous *(New York Kapid Transit Corp. v. City of New York,* 303 US 573, 594, *supra; People* ex rel. *Central Union Trust Co. of New York v. Wendell,* 197 App Div 131, 188 NYS 344, affd., 231 NY 629, 132 NE 916 [1921]). All contracts claimed to provide for tax exemption must receive a strict construction *(Pacific Co. v. Johnson,* 285 US 480, 491 [1938]; *Adams Mfg. Co. v. Storen,* 304 US 307, 315-316 [1938]), and all doubts and ambiguities must be resolved in favor of the taxing power and against the existence of the exemption *(Hale v. Iowa State Board of Assessment and Review,* 302 US 95, 103 [1937]; *People* ex rel. *Central Union Trust Co. of New York v. Wendell, supra).* All contracts are subject to the power of the state to change its tax laws *(Barwise v. Sheppard,* 299 US 33, [1936], reh. den., 299 US 622 [1936]).

> "To all claims of contract exemption from taxation must be applied the well-settled rule that, as the power to tax is

> an exercise of the sovereign authority of the state, essential to its existence, the fact of its surrender in favor of a corporation or an individual must be shown in language which cannot be otherwise reasonably construed, and all doubts which arise as to the intent to make such a contract are to be resolved in favor of the state." *(Seton Hall College v. Village of South Orange,* 242 US 100, 106 [1916].)

Even assuming —*arguendo,* given the overwhelming contrary presumption (*ante,* pp. 4-5)— that a contract was contemplated by the 1915-1922 legislation, reasonable modification of the contract does not violate the Contract Clause *(United States Trust Co. of New York v. New Jersey,* 431 US at 21, *supra; Ogden v. Saunders,* 12 Wheat. 213, 286 [1827]; accord, Hale, *The Supreme Court and the Contract Clause,* 57 Harv L Rev 852, 879-880 [1944]). "This Court's decisions have never given a law which imposed unforeseen advantages or burdens on a contracting party constitutional immunity against change." *(City of El Paso v. Simmons,* 379 US 497, 515 [1965], reh. den., 380 US 926 [1965].)

The constitutional prohibition against impairment of contracts is not an absolute one and is not to be read with literal exactness like a mathematical formula *(City of El Paso v. Simmons, supra,* p 508; *Home Bldg. & Loan Assn. v. Blaisdell, supra,* p 428). Thus, a finding of a technical impairment of contract is but a preliminary step, because any such violation must be counterbalanced against the "essential attributes of sovereign power" necessarily reserved by the states to safeguard the welfare of their citizens *(Home Bldg. & Loan Assn. v. Blaisdell, supra,* p 435; *United States Trust Co. of New York v. New Jersey, supra,* p 21). In this domain of reserved power of a State, this Court has traditionally respected the "wide discretion on the part of the legislature in determining what is and what is not necessary***" *(City of El Paso v. Simmons,* 379 US at 508-509, *supra,* quoting *East N.Y. Sav. Bank v. Hahn,* 326 US at 232-233, *supra).*

Tax exemptions, as with any other statutory grants, are subject to modification by later legislatures *(State of New York* ex rel. *Troy Union R.R. v. Mealy,* 254 US 47, 50 [1920]; *Wisconsin & Michigan Ry. v. Powers,* 191 US 379, 387 [1903]). Here, the 1975 legislation was more than reasonable. The taxpayers of the affected districts who —for the first time in half a century— were to pay for their own schools, were accorded a five year tax exemption (100% the first year, 80% the second year, etc.), with the municipalities relieved of any burden by a gift of $2,500,000 from the State Legislature (Plaintiffs' Complaint, ¶¶ 11-12, Record on Appeal to Appellate Division of State Supreme Court, at 25a-27a; see also, NY L 1975, ch 129).

Judged against all these pillars of Contract Clause jurisprudence, no contract was created by the 1915-1922 legislation, and, *arguendo,* if a contract existed, the 1975 legislation constituted a reasonable modification thereof.

CONCLUSION

FOR THE REASONS STATED, THIS COURT SHOULD DISMISS OR AFFIRM.

Dated Albany, New York
August 5, 1981

Respectfully submitted,

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